



Truro Zoning Board of Appeals Agenda

Remote Meeting

Monday, November 6, 2023 – 5:30 pm
www.truro-ma.gov

[Join the meeting from your computer, tablet or smartphone:](#)

<https://us02web.zoom.us/j/88922362821>

Dial in: +1-646-931-3860 or +1-305-224-1968

Meeting ID: 889 2236 2821 Passcode: 027564

Open Meeting

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. Citizens will be muted upon entering the meeting. Citizens may also provide written comment via postal mail or by emailing Liz Sturdy, Planning Department Administrator, at esturdy@truro-ma.gov.

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.

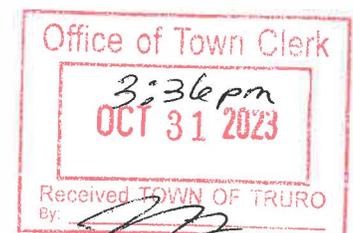
Public Hearings – Continued

2023-006/ZBA Robert J. Martin II and 100 Route 6 LLC for property located at 100 Route 6 (Atlas Map 55, Parcel 12). Applicant appeals a cease and desist order issued by Building Commissioner on May 3, 2023, with respect to property located in the Seashore District. **Original material in 7/24/2023, 8/21/2023, and 10/23/2023 packets**

Next Meetings

- ◆ Monday, November 20, 2023 at 5:30 p.m.

Adjourn



Dear Chairman and ZBA members,

From the October 23, 2023 ZBA meeting I gathered your discussion was concerned with a cease and desist order on 100 Route 6 in Truro.

It has been flouted.

You recently heard Andrew Aiken his history version of Jack's Gas and firewood. I would like to present my two decades plus as Dick's life partner, co-worker and share how he would introduce me as "his better half". All the news-paper articles referred to at the 10/23 meeting....these were positive articles about a good man know being used to stretch the truth.

There is a desired result wanted so does the unethical means justify the end?

Good articles were a result from my efforts.

Examples:

Gary (Gerry) Studds...Outer Cape Rep. to congress... a long-time friend of Dick's came one day into the station...saw Citgo sign upside down... ask me to get Dick off woodpile (generally where Dick was to be found) so they have a conversation on what was going on here at the infamous Jack's gas. Gary took that information to a newspaper reporter... thus the front page article.

Next picture presented ... Dick at gas pumps...(one of my favorites) Journalist from the Netherlands... intrigued by gas station as he had heard of Edward Hopper possible using the station as an inspiration for Edward's famous GAS painting.

Four page article in a popular European monthly magazine.

Dick was the centerfold

Article in German so I had it translated.

Video made in 1994 using gas station as setting for a documentary on Edward Hopper. It was developed by me and Wolfgang Hastert... A German TV producer.

After it was finished, we showed it at Truro Central School for two nights in August. All monies raised were donated to Highland Light moving back from sand dune cliff.

If you remember from October 23rd meeting, comment was made stating ice chest on table in front of building filled with another retail item.

No, Wrong

When our peach tree at times gave an abundance of fruit, we brought peaches to station...In the chest were the free peaches handed out to our customers and friends... That is what was in that chest.

Craig Danzinger now retired ^{FROM} Truro Police Dept....as a rookie worked with Dick splitting wood

Kyle Takakjian another retired (Chief) from Truro Police Dept.as a rookie and thru the years was always at the station.

Both these men will attest to that fact...

No construction material/landscaping material was EVER sold at Jack's gas & firewood.

Please refer to my letter from the October 23rd packet.

Also review minutes from that meeting to review Bob Weinstein's comments. As we all know Bob a Truro icon...Serving the town of Truro and its residents for decades.

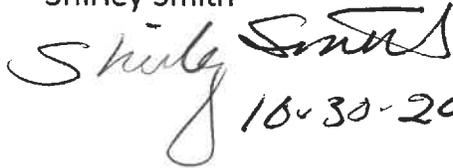
Also importantly Stephen Williams (Truro building inspector, retired) expert explanation of this Town problem that has been brought before your ZBA board to be corrected.

Lots of good home town stories about Dick-me-& Jack's Gas & Firewood.

Thank you for reading all this,

My deepest gratitude,

Shirley Smith

 Shirley Smith
10-30-2023

SUPPLEMENTAL
STAFF MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Town Planner and Land Use Counsel

Date: November 3, 2023

Re: Meeting November 6, 2023

It occurred to me today (!) that there is another way to approach the legal issue of whether the current use of the property is protected as a pre-existing nonconforming use as claimed. This way is simpler, and avoids the convoluted discussion regarding firewood sales in the previous staff memo. While not disavowing that convoluted discussion, I am providing the Board with an alternative or additional way of addressing the legal issue in this appeal.

Applicant's counsel has suggested that to determine whether the current use of the property is protected as a pre-existing nonconforming use, the Board should apply the "Chuckran" or "Powers" test. This test is derived from two Massachusetts Supreme Judicial Court case, Bridgewater v. Chuckran, 351 Mass. 20 (1966), and Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1972), and is applied in cases where the protections of G.L. c. 40A, s. 6 are claimed for a nonconforming use that has changed over time, or is proposed to change.

In Chuckran, the use that became nonconforming when residential zoning was adopted was a home builder's business with concrete mixing only incidental to the building business. Over time, the capacity and output of concrete mixing greatly increased, with additional, heavier equipment and trucks, and the sale and supply of concrete to others became "a major enterprise."

The SJC created a three-part test for determining whether an evolved nonconforming use such as this continues to be protected by G.L. c. 40A s. 6. To qualify for this continued protection, a board must find that:

- (1) the current nonconforming use reflects the nature and purpose of the original lawful pre-existing nonconforming use;
- (2) there is not a difference in the quality, character, or degree of use between the current nonconforming use and the original nonconforming use; and
- (3) the current nonconforming use is not different in kind in its effect on the neighborhood than the original nonconforming use was.

Derby Refining Co. v. City of Chelsea, 407 Mass.703, 711-712 (1990), citing Bridgewater v. Chuckran, 351 Mass. at 23. All three findings must be in the affirmative for the use to have the continued protection of G.L. c. 40A s. 6.

I had been hesitant to apply the Chuckran/Powers test in this case (for convoluted reasons that don't make as much sense to me now), but upon reflection I think the test is appropriately applied here. G.L. c. 40A, s. 6 provides that:

"a zoning by-law shall not apply to structures or uses lawfully in existence. . .before [adoption of the bylaw] . . .*but shall apply to any change or substantial extension of such use.*"

G.L. c. 40A, s. 6, para. 1 (emphasis added).¹ The Chuckran/Powers test is applied to determine whether there has been a "change or substantial extension" of the original nonconforming use.

In this case, the test is applied to determine whether the current use of the property is a "change or substantial extension" of the lawfully preexisting nonconforming gas station use. If the Board concludes, after making findings on the three factors above that there has *not* been a change or substantial extension of the nonconforming gas station use, then the current use(s) of the property continues to enjoy the protection of G.L. c. 40A, s. 6 and Zoning Bylaw s. 30.3(C)(12), and may lawfully continue.

If the Board concludes, after applying the Chuckran/Powers test that there *has been* a change or substantial extension of the nonconforming gas station use, then the Seashore District zoning bylaw applies. Specifically, the prohibition on commercial use applies to use(s) of the property that are a change or substantial extension of the gas station use. Those uses may not lawfully continue.

Status of firewood sales

As discussed in the previous staff memo, the commercial use of the property predating establishment of the Seashore District in 1963 was use as a gas station, not a use selling firewood. The Town has nevertheless evidently treated the sale of firewood as a lawful pre-existing nonconforming use. The Board is not obliged to continue doing so

However, if the Board is inclined to view the sale of firewood as a lawful pre-existing nonconforming use, then in applying the Chuckran/Powers test, the Board would include firewood sales as part of the original nonconforming use when comparing the original nonconforming use to the current nonconforming use.

In conclusion

Sometimes it takes longer to see the simpler solution than it does to see the more complicated one. Again, while not disavowing the previous memo, I think this one provides the Board with a simpler analysis (which, it should be noted, applicant's counsel did suggest) which is also consistent with decisional law.

¹ Technically, the operative date is when the bylaw was first advertised for public hearing.

APPEAL OF CEASE & DESIST: 100 ROUTE 6

DRAFT FINDINGS

NOVEMBER 1 2023

1. The property located 100 Route 6 is within in the Seashore Zoning District and contains 1.7 acres. The property was site of Jack's Esso Station (later Jack's Gas), which commenced operation in the late 1940s. The property was purchased by Richard Aiken in 1978, who continued to operate Jack's Gas.
2. Jack's Gas was in operation prior to the creation of the Cape Cod National Seashore in 1961, and prior to creation of the Town's corresponding Seashore Zoning District in 1963.
3. Commercial uses (other than commercial fishing activity and food trucks) are prohibited in the Seashore District. See Zoning Bylaw s. 30.2, Use Table.
4. In addition, the "continuous storage of materials or equipment" is prohibited in the Seashore District. See Zoning Bylaw s. 30.3(C)(7).
5. The property's use as a gas station became nonconforming in 1963, at the time the Seashore Zoning District was adopted.
6. Evidence indicates that the sale of firewood had commenced in approximately 1981 *[or other]*.

Minutes of a September 27, 2004 ZBA meeting state that the site "had been a gas station and firewood business for seventeen years," which would mean sales of firewood started in 1987. Minutes of the ZBA's November 1, 2004 meeting state that Mr. Aiken identified 1981 as when firewood sales began.

Other evidence of date?

7. The sale of gas on the property ceased in March 1998, following the discovery of a gas leak from an underground tank. All underground gasoline tanks were removed at that time. Remediation commenced and gas station operations ceased as of March 1998.
Source: Bldg Dept File.
8. Remediation work was completed on *date [see Building Department file]*
9. At the time gas sales ceased in 1998, firewood was also sold on the site, as were other items including frozen candy bars.

10. Mr. Aiken continued to sell firewood on the site following cessation of gas sales. Proceeds from the sale of firewood were paid into an escrow account for site remediation purposes.
11. Mr. Aiken began leasing out the property in 2005; both the sale of firewood (by tenants) and payment of proceeds into the escrow account continued. **Source – Bldg Dept file**
12. The station building itself succumbed to fire on November 14, 2003.
13. On November 4, 2004, Mr. Aiken was granted a special permit by the ZBA "to rebuild a pre-existing, nonconforming structure on its original location. . . . [and] a Condition to said Grant is the Special Permit shall extend for thirty (30) years from the date of approval." According to ZBA meeting minutes of September 27, 2004, Mr. Aiken's stated intent was not to re-establish a gas station; he stated that "he did not intend to expand beyond the sale of firewood." A building permit issued on February 1, 2006, but the building was never constructed.
14. Sale of firewood on the property continued **[without interruption] OR [on and off]** until the present time.

Did sale of firewood cease at any time? letter from Mr. Aiken's counsel to the Park Service dated September 15, 2008 states that firewood sales were "suspended" due to economic conditions, but the term of this suspension is not evident.
15. The property is currently owned by 100 Route 6 LLC, an entity related to the Aiken family.
16. The property is currently leased to Robert Martin. In early 2023, Mr. Martin cleared portions of the site; installed additional storage structures for the firewood and signs for the business; and placed additional materials on the site in separate storage areas contained by concrete block walls. Mr. Martin stores and sells firewood, loam, gravel, shells, and other landscaping-related materials on the site.
17. Such activities require prior Commercial Site Plan Approval by the Planning Board, which had not been obtained. See Zoning Bylaw s. 70.4.
18. On March 15, 2023, at the direction of the Building Commissioner, Mr. Martin filed an application with the Planning Board for Commercial Site Plan Review. The application stated "No change of use, selling firewood and other materials like the previous tenant." Mr. Martin's application did not include certain required materials, including a site plan

reflecting existing conditions. Hearing opened on April 12, 2023 and has been continued without further testimony.¹

19. On May 5, 2023, the Building Commissioner issued a cease and desist order to Mr. Martin, stating:

"This operation is in violation of the Town of Truro Zoning Bylaws paragraph 30.3 Seashore District item 12 which states, 'Lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use.' The current use is an alteration and intensification of the prior use and therefore NOT ALLOWED."

This CEASE and DESIST order is effective immediately. . . ."

20. Mr. Martin timely appealed the cease and desist order. The Board reviews this order pursuant to G.L. c. 40A, s. 8 and s. 15, and Zoning Bylaw Section 60.2.

21. Section. 30.3(B)(12) of the Seashore District Bylaw provides that:

"Lawfully pre-existing non-conforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use."

22. A zoning bylaw or ordinance may permissibly provide for such strict regulation of nonconforming uses. See Blasco v. Board of Appeals of Winchendon, 31 Mass.App.Ct. 32, 39 (1991)(recognizing "the continuing right of a municipality through its zoning bylaw to regulate *or forbid changes* in nonconforming uses")(emphasis added); Almeida v. Arruda, 89 Mass.App.Ct. 241 at n.5 (same).

23. The Building Commissioner found that Mr. Martin's use of the property "is an alteration and intensification of the prior use and therefore not allowed." Order dated May 3, 2023.

24. In determining whether to uphold the Building Commissioner's Order, the Board must first establish the "lawfully pre-existing nonconforming commercial use" of the property, against which the current use is measured to determine whether there has been an "alteration" of that that pre-existing use, or "conversion to another commercial use." See Zoning Bylaw s. 30.3(B)(12).

25. Commercial use of the property became nonconforming in 1963, when the Town adopted the Seashore Zoning District. At that time, the property's use was as a gas station. The

¹Hearing before the Planning Board on Site Plan Review has been continued pending resolution of these proceedings.

"lawfully pre-existing commercial use" of the property is therefore as a gas station. *[add citation on nonconforming use determined at time of adoption]*

NOTE: The following paragraphs 27-39 find that the sale of firewood is not protected as a pre-existing nonconforming use, based on the fact that the property's commercial use predating establishment of the Seashore District was use as a gas station, not a use selling firewood.

The Town has nevertheless evidently treated the sale of firewood as a lawful pre-existing nonconforming use. The Board is not obliged to continue doing so.

However, if the Board is inclined to continue treating the sale of firewood as a lawful pre-existing nonconforming use, then an alternate set of findings/analysis is supplied at paragraphs 40-45 to address the issue of "alteration" of a nonconforming use.

26. There is no evidence that firewood or any other materials were sold on the property at the time the Seashore Zoning was adopted. The "lawfully pre-existing commercial use" of the property therefore does not include the sale of firewood or other materials.²
27. Evidence in the record suggests that firewood sales commenced by Mr. Aiken in approximately 1981 (*see 2004 special permit proceedings*). Although not a part of the lawfully nonconforming use of the property *as a gas station*, the sale of firewood was tolerated by the Town at that time, and subsequently. See footnote 2 below.
28. The sale of firewood may be viewed as a use accessory to the principal gas station use - albeit an *unlawful* accessory use, as such sales were not conducted at the time the

² Nevertheless, there is evidence in the record that the Town has considered the sale of firewood on the property to be lawful. This evidence includes the 2004 ZBA special permit and related meeting minutes, which reference firewood sales. In addition, the Town has allowed this use to continue unimpeded over the years. However, the Town is not constrained from enforcing a provision of its zoning bylaw by any prior failure to do so. See Building Commissioner of Franklin v. Dispatch Communications of New England, Inc., 48 Mass.App.Ct. 709, 715 (2000) (“The building commissioner's original conclusion that the tower did fall under the definition of public utility does not preclude the board's later enforcement of a contrary position.”)

Seashore District Zoning was adopted, and were therefore not part of the gas station use that became lawfully nonconforming.³

29. The nonconforming use of the property as a gas station ceased in 1998 following the tank leak and removal.
30. Under Section 30.7 of the Zoning Bylaw, preexisting nonconforming uses lose their lawful status if abandoned for a period of two years or more:

“Abandonment. Nonconforming uses which have been abandoned for a period of 2 years or more shall not be re-established, and any future use shall conform to the then-current bylaw.”

Zoning Bylaw s. 30.7(C).

31. This provision is consistent with G.L. c. 40A, s. 6, which provides in part:

“A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.”

32. As of March or perhaps May of 2000 - two years following the cessation of gas sales and the removal of tanks - the nonconforming gas station use had been abandoned or discontinued for a period of two years.⁴
33. As a result, at that time, gas station use of the property lost its status as a lawful preexisting nonconforming use. Such use could not (and cannot) be reestablished. See Zoning Bylaw s. 30.7(C).
34. The sale of firewood, which had been a use *accessory* to the principal gas station use - tolerated by the Town, but nevertheless unlawful - continued on the property following cessation of the gas station use.

³ An accessory use is defined in the Zoning Bylaw as “[a] use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.” It would be fair to say that the sale of firewood is “customarily incidental” at gas stations on the Cape and elsewhere. It would also be fair to say that when firewood was sold at the gas station in this case, such sales were “subordinate” to the gas station use. Therefore, the sale of firewood may be considered to have been a use accessory to the principal gas station use of the property -again, however, an *unlawful* accessory use.

⁴ *There was reference at hearing to a prohibition on any future gas sales operations - find/confirm*

35. However, an accessory use cannot exist on a property except in relation to a principal use. “An incidental or accessory use under a zoning law is a use which *is dependent on or pertains to the principal or main use.*” Town of Needham v. Winslow Nurseries, Inc., 330 Mass. 95, 101(1953)(emphasis added).
36. After the principal gas station use was extinguished in 2000 (two years after operation of the gas station ceased), there was no principal use on the property on which firewood sales were “dependent.” The firewood sales – formerly dependent upon the gas station use - were in effect orphaned when the nonconforming gas station use was extinguished in 2000. At that time, although the sale of firewood had been tolerated by the Town for years, such sales no longer had any claim to being a *lawful* accessory use. Such sales became simply unlawful.⁵
37. The sale of firewood is a commercial use of the property 1) prohibited in the Seashore District under the Zoning Bylaw; and 2) not protected as a lawful preexisting nonconforming use. Such use is unlawful.
38. The sale of other materials (gravel, shells, etc.) is a commercial use of the property 1) prohibited in the Seashore District under the Zoning Bylaw; and 2) not protected as a lawful preexisting nonconforming use. Such use is unlawful.

ALTERNATIVE FINDINGS - CONTINUING TO TREAT FIREWOOD SALES AS LAWFUL PRE-EXISTING NONCONFORMING USE & ADDRESSING "ALTERATION" OF SUCH USE.

39. Based on the 2004 special permit, related minutes, and other evidence in the Building Department file, it appears that the sale of firewood on the property has been considered by the Town to be a lawfully pre-existing nonconforming use that may "continue" on the site under Zoning Bylaw s. 30.3(B)(12)
40. Section 30.3(B)(12) prohibits the "alteration" of a lawfully pre-existing nonconforming use, or its "conver[sion] to another commercial use."

⁵ The fact that the Town has not enforced the Bylaw with respect to the sale of firewood on the property would not prevent it from taking enforcement action now, should the Board conclude such use is unlawful. See Building Commissioner of Franklin v. Dispatch Communications of New England, Inc., 48 Mass.App.Ct. 709, 715 (2000)(“The building commissioner's original conclusion that the tower did fall under the definition of public utility does not preclude the board's later enforcement of a contrary position.”)

41. Evidence supports a finding that the pre-existing use of the property for sale of firewood has been "altered."

42. Many materials in addition to firewood (e.g., gravel, sand, shells, loam) are now sold on the site, expanding the scope of the pre-existing use. Such expansion of scope is an "alteration" of the pre-existing use.

43. In addition, the scale and intensity of the operation have increased, enabling the business to serve landscape businesses and contractors. This increased scale and intensity are additional "alterations" of the pre-existing use.

44. [other findings to be made by the Board].

45. Based on the above, the Board finds that all activity on the property other than the sale of firewood constitutes an unlawful alteration of the pre-existing nonconforming use under Zoning Bylaw section 30.3(B)(12).

46. The Board accordingly upholds the Cease and Desist Order issued by the Building Commissioner on May 3, 2023

FINDINGS ON CONTINUOUS STORAGE OF MATERIALS AND EQUIPMENT

47. Among other prohibited uses in the Seashore District is the "continuous storage of materials or equipment." See Zoning Bylaw section 30.3(C)(7).

48. The current use of the property for sale of firewood and other materials at the current scale entails continuous storage of a sizeable quantity of materials, as well as equipment used to load and unload materials.

49. This continuous storage of materials and equipment violates Zoning Bylaw s. 30.3(C)(7).⁶ [*except as to the storage of firewood*]

⁶ Under Section 30.7(C) of the Zoning Bylaw, once a nonconforming use is lost, any subsequent use of property must conform to the then-current Bylaw. The nonconforming gas station use of the property was extinguished in 2000. Where the nonconforming gas station use of the property was extinguished in 2000, the property must comply with current Bylaw requirements, including the prohibition on storage of materials and equipment contained in s. 30.3(C)(7).

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MEMORANDUM

To: Truro Zoning Board of Appeals
From: William C. Henchy
RE: 100 Route 6; Appeal No. 2023-006
Date: November 6, 2023

During the hearing held on October 23, 2023, the applicant presented extensive evidence that the property at 100 Route 6 was used as a retail establishment for decades.

The retail use, as presented by the Owner who has personal knowledge of the property going back to 1976, was the retail sale of gasoline, oil, cigarettes, candy bars, coffee, transmission oil, firewood, hats, T-shirts, and numerous other items to the public. The sale of firewood involved the storage on-site of huge quantities of both split logs and raw logs, covering virtually the entire site.

Use of the site for retail purposes became non-conforming in 1963 when the Town of Truro adopted its Zoning by-law establishing the Seashore District. A copy of that Zoning By-law in its entirety is attached.

At that time, Truro Zoning did not define the term “commercial use” or “retail use” whatsoever. In fact, the word “retail” only appears once in the 1963 Zoning by-law, as a permitted use in the General Business District. The precise term used in the 1963 Zoning, and all iterations of the Zoning by-law since, prohibited “commercial or industrial ventures or activities”.

Moreover, retail uses were not rendered non-conforming in the Seashore District until the 2014 Zoning by-law. The fact that the Zoning by-law distinguishes between “commercial and industrial uses” on the one hand, and “retail” on the other hand, suggests that retail uses are not prohibited in the Seashore District, or at least were not prohibited until 2014, when retail sales were included in the use table as a category within the table of Commercial Uses.

What the Board is essentially attempting to do is to subdivide retail use into specific products sold by a retail use.

There is no support in the Zoning by-law for doing so, except in the specific instance of how many parking spaces are required for large vs small retail uses. See Section 30.2 and 30.9.

This is not the first time this issue has arisen. In *Powers v. Building Inspector of the Town of Barnstable*, 363 Mass. 648 (1973), the Court stated that “We need not decide whether every addition to a retail operation ...would overload a nonconforming or other legal use.” Id. at 656.

Instead, the Court emphasized in 1973, as has virtually every case since that date, that the question must be decided on a case by case basis, and the determination of whether there has been an change or alteration of a pre-existing non-conforming use turns on “(1) Whether the use reflects the ‘nature and purpose’ of the use prevailing when the zoning by-law took effect. . . . (Citations omitted.) (2) Whether there is a difference in the quality or character, as well as the degree, of use. . . . (Citations omitted.) (3) Whether the current use is ‘different in kind in its effect on the neighborhood.’ . . .”, citing to *Bridgewater v. Chuckran*, 351 Mass. 20, at 23, 217 N.E.2d 726, at 727, (1966).

Here, the Appellants’ evidence is that since prior to 1963, the site was the subject of a retail establishment, selling at various times various products that include gasoline and firewood, up to the present day with the sale of firewood and landscaping products. The Appellant asserts therefore that:

1. The fundamental nature and purpose of the property’s uses has been the sale of retail products and some services to the public.
2. There has been no change in the quality or character of the use, through the specific products sold over the years may have changed. The intensity of the use has substantially diminished.
3. The current use is not different in kind in its effect on the neighborhood, and in fact has a substantially lesser effect on the neighborhood than the operation of a gas station and associated retail sales including firewood and numerous other goods, and some limited services (Homeowner security checks)

On this analysis, which is the correct legal test, the present uses are not an unlawful change, intensification, or extension of the pre-existing lawful use, which at all times is a retail use.

The appellant incorporates by reference all of the prior materials filed, some of which are attached hereto and made a part hereof.

August 2023



Appeal of Robert Martin II and 100 Route 6 LLC

Timeline

1930's	Jack's Gas begins operation
1936	Truro adopts Zoning
1940	Edward Hopper paints "Gas"
1963	Truro creates Seashore District, Section VII of the Truro Zoning by-law—prohibits Commercial Ventures and the continuous storage of equipment or materials
1974	Diana Worthington Lof and Robert Lof purchase Jack's Gas December 24, 1974
1978	Richard (Dick) Aiken purchases Jack's Gas from Diana Worthington December 24, 1978
1979	Dick Aiken Retires
1979-1980	Dick Aiken begins firewood sales, adds various items and services for sale at 100 Route 6, begins Home Security Check and Cottage rental businesses
1981	ZBA grants Special Permit for expansion of the building at 100 Route 6 to add a utility room and addition to the building at 100 Route 6, June 11, 1981
1992	Dick Aiken and Citgo part ways—Aiken refuses to conform to Citgo demands for format of the store, insists on continuation of Country store format
1992	ZBA grants Special Permit for new sign June 26, 1992
1998	Gas spill February 23, 1998—gas sales stop, Aiken continues to sell "21 of the 22 items" it has sold throughout the years (Provincetown <i>Banner</i> , July 30, 1998)
2003	November 14, 2003, fire destroys building at 100 Route 6
2004	ZBA issues Special Permit to Rebuild the building at 100 Route 6—30 year term, November 4, 2004. Dick Aiken thanks the Board members in writing for their "sensitivity, encouragement and good will" which "raises our spirits to fight the good fight". Sale of gas abandoned. Cape Cod National Seashore

supports the Special Permit and continued sales of firewood as a means to pay for the cleanup of the site.

2004—present. Cleanup of the site continues. Retail sales continue from site. Aiken family pays taxes, pays for cleanup, persists with uses of the site, awaiting cleanup and ability to rebuild structure pursuant to 2004 Special Permit (good until November 4, 2034).

There is no permanent solution to the cleanup other than continued monitoring of the site and dilution of the contaminants over time. The Aiken Family is continuing to incur cleanup monitoring expenses to the present date, estimated to be over \$100K over the next decade or more..

2008—Truro Zoning Bylaw amended to prohibit alteration or expansion of non-conforming uses in the Seashore District, May 2008

2023—Lease to Robert Martin. Building Commissioner determines that Mr. Martin's uses constitute an alteration and intensification of the prior use and must be discontinued. This appeal follows.

Essential Contentions:

1. This site has been the site of an ongoing retail operation, selling various products and services, since the 1930's;
2. The uses were never limited to the sale of gasoline;
3. The uses and the structures on the property were expanded throughout the period of Dick Aiken's ownership since 1978 and included multiple permits issued by this Board;
4. As such, all the prior uses were understood to be a part of the ongoing retail and commercial activities at the site;
5. The business operated for a five-year period entirely without the sale of gasoline, from February of 1998 through November of 2003, selling "21 of the 22" items that Dick Aiken had sold over the years;
6. Since there was no sale of gasoline whatsoever during this period, it is illogical to assert that these uses were "accessory" to the sale of gasoline. The business stood on its own entirely without any sale of gasoline from February of 1998 until the building was destroyed by fire in 2003;
7. Dick Aiken immediately sought permission to rebuild the structure, and such permission was granted, good for 30 years, by this Board;

8. Truro's Zoning by-law has never allowed mere non-use to cause a non-conforming use to lapse. A Town may allow such lapse by abandonment or by non-use, or by both. Bartlett v. Board of Appeals of Lakeville, 23 Mass.App.Ct. 664, 669 (1987). The Aiken family has never abandoned any use at the site other than the sale of gasoline.
9. The mere fact that there are changes to a non-conforming use does not, under the law, render the non-conforming use altered or intensified.
10. A non-conforming use, though changed, made larger, or altered in some way is not an alteration or intensification of that use if:
 - (a) The current use reflects the nature and purpose of the original lawful pre-existing nonconforming use;
 - (b) There is not a difference in the quality, character, or degree of the use between the current nonconforming use and the original nonconforming use; and
 - (c) The current nonconforming use is not different in kind in its effect on the neighborhood than the original nonconforming use. Bridgewater v. Chuckran, 351 Mass. 20, 23 (1966).

The result of the application of this test "depends almost entirely on the particular facts of each case". Powers v. Building Inspector of Barnstable, 363 Mass. 648, 653 (1973).

11. The current use is (a) exactly analogous to the extensive storage, processing, and sale of materials and goods that has taken place at 100 Route 6 since Bob Lof began storing plumbing materials and supplies on the site in 1974; (b) is of the same character, quality and degree as the original use, but for the sale of gasoline, which was abandoned by Dick Aiken in 2004; and (c) in its effect on the neighborhood, is far less intensive than what previously existed, causes less traffic, occupies less of the site, and is open fewer hours.

LEGAL STANDARDS APPLICABLE

1. A non-conforming use, though changed, made larger, or altered in some way is not an alteration or intensification of that use if:
 - (a) The current use reflects the nature and purpose of the original lawful pre-existing nonconforming use;
 - (b) There is not a difference in the quality, character, or degree of the use between the current nonconforming use and the original nonconforming use; and
 - (c) The current nonconforming use is not different in kind in its effect on the neighborhood than the original nonconforming use. *Bridgewater v. Chuckran*, 351 Mass. 20, 23 (1966).

2. Truro's Zoning by-law has never allowed mere non-use to cause a non-conforming use to lapse. A Town may allow such lapse by abandonment or by non-use, or by both. *Bartlett v. Board of Appeals of Lakeville*, 23 Mass.App.Ct. 664, 669 (1987). The Aiken family has never abandoned any use at the site other than the sale of gasoline.

DECISION OF THE BOARD OF APPEALS OF TRURO, MASSACHUSETTS

N O T A N N O T A N

Property Owner(s) and/or Applicant(s): Richard Aiken, Trustee for Aiken Family Realty Trust

Property Location: 100 Route 6

Atlas Sheet: 55 Parcel: 12 (Ref. 2004-010ZBA) Hearing Date: Monday, November 1, 2004 (as continued from July 26, August 23, and September 27, 2004)

O F F I C I A L O F F I C I A L

C O P Y C O P Y

Special Permit Vote: 5 Approve
Variance 0 Disapprove
Building Commissioner Decision Abstain
Other

Motion (Hultin; 2nd Pope): To grant a Special Permit to Richard Aiken, Trustee for Aiken Family Realty Trust, for property located at 100 Route 6 (Atlas Sheet 55, Parcel 12; ref. 2004-010 ZBA), to rebuild a pre-existing, non-conforming structure on its original location which was destroyed by fire November 14, 2003, with reference to Sec. VII 1.h, VII 3.e and VIII-B 1. of the Zoning Bylaw, as per plans filed with the Truro Zoning Board of Appeals November 1, 2004. The Board Finds said Grant is in keeping with the general intent of the bylaw and not more detrimental to the neighborhood and notes with reference to Sec. VII – Seashore District, said Grant is in keeping with the intent "... to preserve and increase the amenities of the Town...". A Condition to said Grant is the Special Permit shall extend for thirty (30) years from the date of approval {11/1/04}.

I hereby certify this as a true and accurate record of the Board of Appeals.

Richard F. Hultin ZBA 11/5/2004
Signature Date

Received Office of the Town Clerk

Signature Date November 5, 2004

I hereby certify that this decision was filed with the Office of the Town Clerk on November 5, 2004 and 20 04 (twenty) days have elapsed since the date of filing, and no appeal has been filed.

Signature Date November 29, 2004

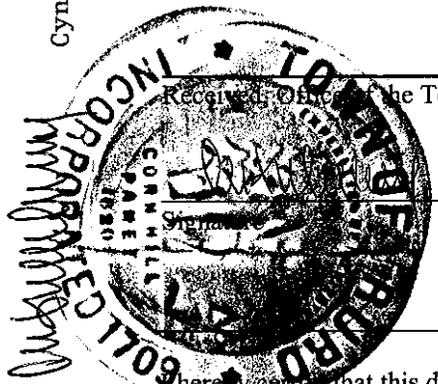
NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, Section 17.)

A COPY OF THIS DECISION MUST BE FILED WITH THE REGISTER OF DEEDS OF BARNSTABLE COUNTY BY THE APPLICANT

BARNSTABLE REGISTRY OF DEEDS

Cynthia A. Slade, Town Clerk, Town of Truro/ November 29, 2004
Book 10061, Page 149

A true copy, attest:



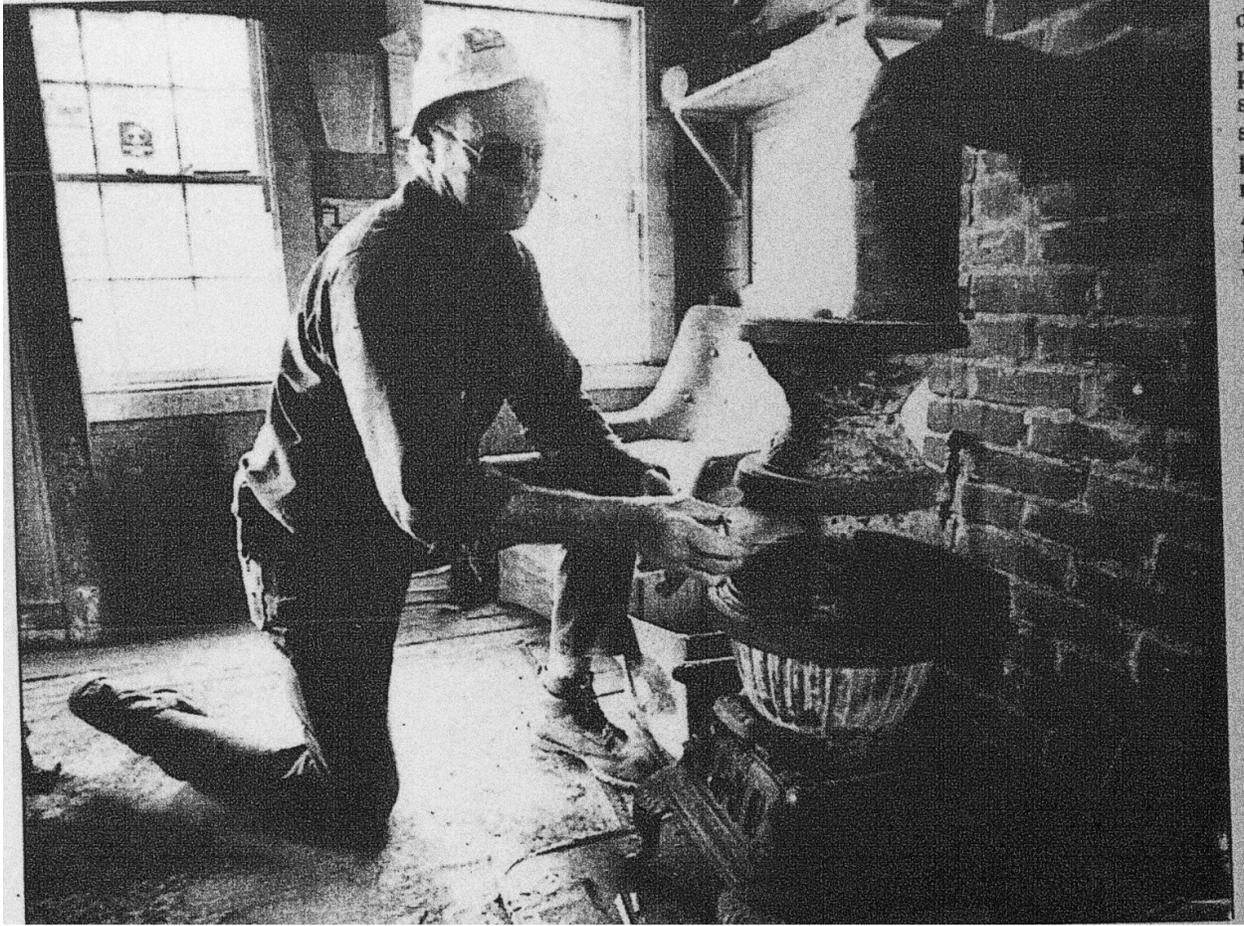
Approximately 1979 - 1980







Approximately 1993-1995



Boston *Globe*, April 19, 1992

TRURO

Looks like Jack's Gas will be back

By Hamilton Kahn
BANNER STAFF

As was the case with Mark Twain, it appears that reports of the demise of Jack's Gas were a bit premature.

Owner Dick Aiken told the Banner this week that, if all goes according to plan, the historic service station — which is also one of only a handful of grandfathered businesses within the National Seashore — should be pumping gas again by early next year, despite having suffered an accidental fuel leak earlier this year that resulted in the removal of its fuel-storage tanks and pumps and put it out of business for the summer season.

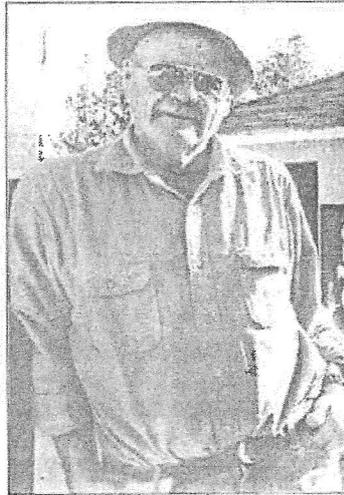
"There are two main hurdles we have to clear," Aiken said. "One is to get a renewed permit in December from the Seashore. The second is to get in touch with a company that will be able to do the work. We have to reinstall everything — pumps,

Watson to speak at Cobb Library

Truro children's book writer Nancy Dingman ("Ding") Watson will be the featured speaker at the next "Conversations with Authors" program at the Cobb Library next Thursday, Aug. 6, at 7:30 p.m. The program will focus on children's fiction and will include questions and observations from the audience.

Watson has written more than 25 children's books and plays. She has also collaborated with three of her children, Wendy, Clyde and Thomas, all of whom are artists.

Support for battered women



Banner file photo

Dick Aiken

tanks, piping, everything — and they're probably not available to do it until after the first of the year."

As first reported in the Banner in late April, the leak in one of the station's three underground tanks, which was discovered in February, contaminated the station's well but did not spread to any adjacent properties. The nearest house is more than a quarter of a mile away. "We've had six monitoring wells drilled," Aiken said. "The good

news is, fortunately, the contamination has not spread. The bad news is that it's cost me about \$22,000 to get out of the [gas] business, and now it's going to cost about \$100,000 to get back in." Aiken expects to be reimbursed by the state for the cost of the cleanup, and has received a number of attractive financing offers for the reinstallation of the station's gas pumps and tanks.

Aiken said he sent the Seashore a letter on Tuesday formally requesting renewal of the station's permit, and said he received very positive signals from Seashore Supt. Maria Burks when he met with her last week to discuss the station's future. He added, "I have no intention of changing the nature of the business."

The station is currently still open, selling firewood and what Aiken said are "21 of the 22 items" it has sold through the years. He said he has also learned that his town business permit has a two-year "grace period" and is good until June 9, 2000 — yet another indication that motorists may be able to be filling up at Jack's well before too long. "We're going to keep our fingers crossed," he said.

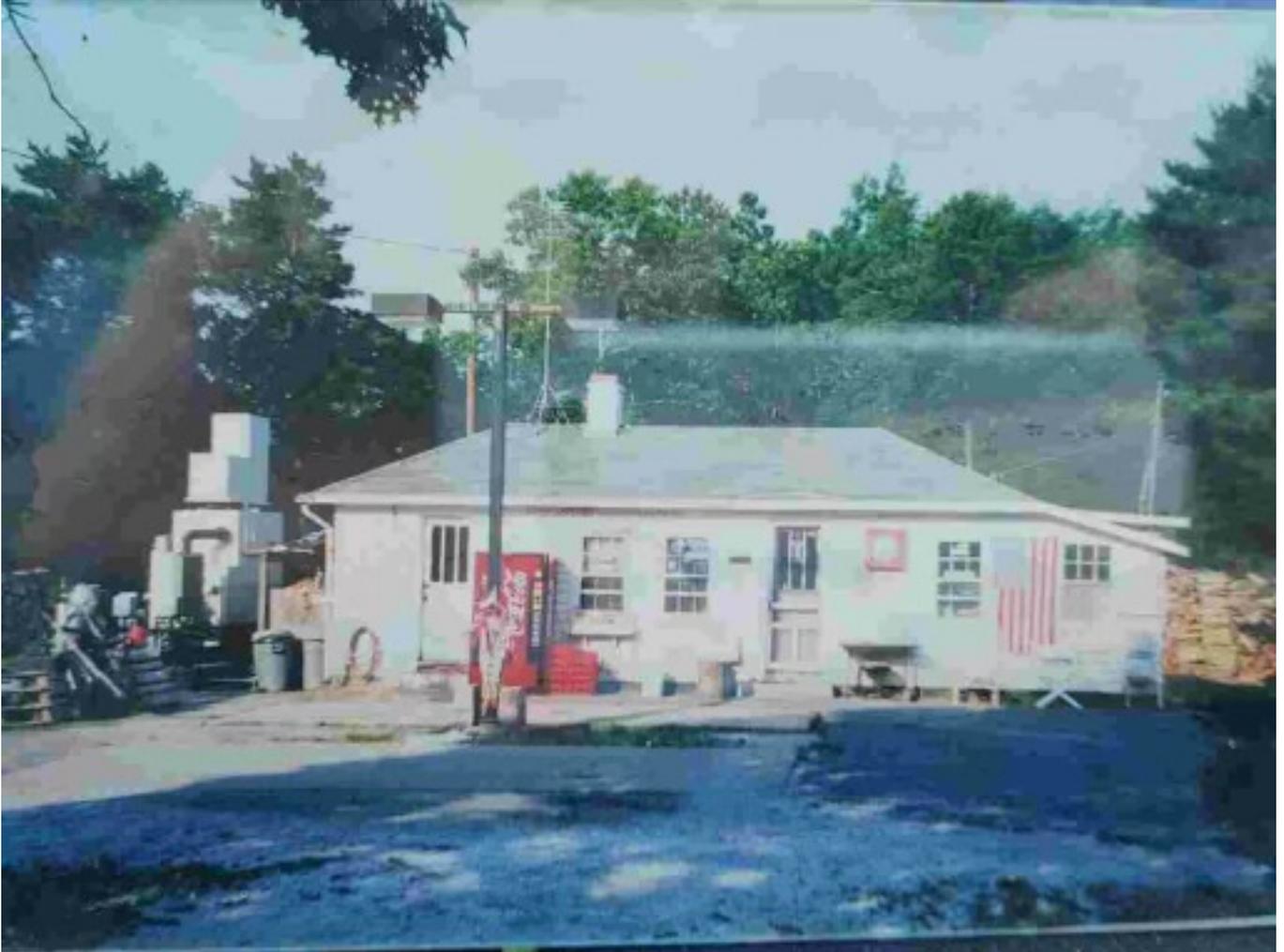
Blacksmith Shop
Beautiful Food • Finest Ingredients
DINNER from 5 pm 7 DAYS and NIGHTS. BREAKFAST 8 am-1 pm
PAMET ROAD EXIT • TRURO CENTER • 349-8554

The WHITMAN HOUSE

Truro

Fire board named: The Seashore Board of Fire Engineers has named Thomas E. Prada as Fire Chief. Prada, who has been on the board since 1995, will be on site from 9 a.m. to 1 p.m. Prada's appointment followed the resignation of the previous chief, Betsy Souza. Months of controversy preceded the appointment. **Calling all philatelists:** The Special Postage Cancellation and Treasures, across from the library, will be on site from 9 a.m. to 1 p.m. Prada's 27 years on the board will be celebrated at a special sale at the same time. **the cancellation and Betsy Brooks to be honored:** The 1998 Annual Meeting of the Seashore Distinguished Citizens of the Seashore will have been active in local affairs. Prada and Betsy Brooks have been active in local affairs here on the Planning Board, the Library Trustees and director in a graphic design business at the Central School.

OPEN



Approximately 2000--note cleanup apparatus

ZONING BY-LAW

FOR

TOWN OF TRURO

Adopted on February 15, 1960, under Article 23

Amended: February 18, 1963

ZONING BY-LAW

FOR

TOWN OF TRURO

SECTION I — PURPOSE

The purpose of this By-Law is to promote the health, safety, convenience and welfare of the inhabitants of Truro; to prevent the overcrowding of land, to conserve the value of land and buildings, and to encourage the most appropriate use of the premises throughout the Town of Truro as authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40A, and any amendments thereof.

SECTION II — DEFINITIONS

In this By-Law the following terms, unless a contrary meaning is required by context or is specifically prescribed, shall have the following meanings:

1. Customary or self home occupations

This shall include resident carpenters, plumbers, paperhangers, shellfish opening, masons, radio TV repairs, dressmaking, hand laundering, home handicrafts, home cooking, lawn mower and bicycle repairs, the practice of any recognized profession and any others of similar nature which may be approved by the Board of Appeals; but shall not include the operation of a store or display to the passing public of goods not manufactured on the premises.

2. Cottage Colonies, Cabins, Motor Courts

This shall include cottages or cabins for human habitation customarily rented by the day, week, month or season, consisting of two or more units under one ownership, located on a parcel of land wherein the lot area occupied by each unit does not meet the lot area requirements in the district where located.

3. Motels

A group of rental units for human habitation under one roof with separate outside entrances for each unit. Motels may provide space for cooking within each unit, and include an apartment and office for resident manager as well as a lounge for patrons.

4. Signs

For the purpose of this By-Law the area of a sign shall be the total width and length of the surface on which the inscription appears, and shall not include posts or other supporting devices, but shall include flags, banners and other attention getting devices designed to draw attention to the premises. No sign shall be of the neon or gas filled tube type and shall be so located or illuminated as to be hazardous to traffic.

SECTION III — ESTABLISHMENT OF DISTRICTS

III-A Types of Districts

For the purpose of this By-Law the Town of Truro is hereby divided into the following types of districts:

1. Residential
2. Limited Business
3. General Business
4. Seashore

(2/63)

III-B Location of Districts

Said districts are located and bounded as shown on a map entitled "Zoning Map of Town of Truro, Massachusetts" dated November 10, 1962, and on file in the office of the Town Clerk. The Zoning Map with all explanatory matter thereon is hereby made a part of this By-Law. (2/60,2/63)

1. The width of the business zone shall be 300 feet on either side of road except where this will interfere with a residential or limited business road. When this occurs the residential area or the limited business area will have preference.
2. Whenever a Limited Business Zone interferes with a Residential road the residential area will have preference.
3. The Business Zone along Route 6A in Truro Center shall be 300 feet in width, either side of the road.
4. The Business Zone on Highland Road, North Truro, shall be 300 feet in width, either side of the road.
5. The Limited Business area from Grozier Square to the Provincetown-Truro line along Route 6A shall be 150 feet wide on either side of the road.
6. The Limited Business area along South Highland Road, Highland Road, and Coast Guard Road in North Truro shall be 300 feet wide on either side of the road.
7. The property fronting on the West side of Route 6 from junction of Route 6 and Castle Road, northerly to the junction of Route 6 and Route 6A, North Truro, shall, except as hereinafter stated, be zoned as a general business district to a depth of 500 feet from said Highway, and all remaining property fronting on either side of said Highway shall be zoned as a residential district.

EXCEPTION:

The area directly opposite Truro Central School having a frontage of eight hundred twenty-five feet (825') more or less, and to a depth of two hundred fifty feet (250') shall be zoned for residential use.

SECTION IV — RESIDENTIAL DISTRICT

IV-A Permitted Uses

1. Detached one family dwelling. This does not include tents, trailers, Quonset huts or portable buildings.
2. Religious, educational and municipal use.
3. Public and private parks, playgrounds, non commercial recreational activities.
4. Hospital, sanitarium, convalescent home.
5. Renting of rooms or furnishing of board by a family.

6. Accessory uses customarily incidental to a permitted main use on the same premises and provided such uses are not detrimental to a residential neighborhood.
7. Customary or self home occupations as defined in Section II, Paragraph 1.
8. Farm, garden and nursery, excluding any use injurious, noxious or offensive to the neighborhood.
9. Signs as defined in Section II, Paragraph 4, provided that such signs pertaining to the lease, sale or use of a lot or building on which they are placed, do not exceed a total of six (6) square feet per sign, and not to exceed a total of two signs per lot or building.

IV-B Permitted Uses only if authorized by the Board of Appeals

1. Aviation field.
2. Golf Club.
3. Cemeteries and/or funeral home.
4. Research or experimental laboratory.
5. Private club not conducted for profit.
6. Boys' or Girls' camps.
7. Marine installations.
8. Raising of livestock or fur bearing animals, provided such activity is carried on at least one hundred (100) feet from any property line and provided such use is not detrimental to a residential neighborhood.

SECTION V — LIMITED BUSINESS DISTRICT

V-A Permitted Uses

1. Any use permitted or authorized in Section IV.
2. Cottages or Cabin Colonies, Motor Courts as defined in Section II, Paragraph 2.
3. Motels as defined in Section II, Paragraph 3.

SECTION VI — GENERAL BUSINESS DISTRICT

VI-A Permitted Uses

1. Any use permitted or authorized in Section IV.
2. Any use permitted or authorized in Section V.
3. Hotel or Restaurant.
4. Place of amusement or assembly or club conducted for profit.
5. Automobile service station, repair shop, storage garage or salesroom.
6. Retail or wholesale business service or public utility.
7. Any industrial or manufacturing use, if authorized by the Board of Appeals, provided that no such use is injurious or offensive or tends to reduce values in the same district by reason of dirt, odor, fumes, gas, sewage, noise, or danger from explosion or fire.
8. The use of signs as defined in Section II, paragraph 4, with a total area of not more than eighteen (18) square feet per sign, except that when attached to the front wall of any building the total area shall not exceed three (3) square feet for each foot of frontage of the building. There shall be not more than two (2) signs per location.

SECTION VII — SEASHORE DISTRICT

The Seashore District is intended to further preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein; to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation and general welfare of the public.

1. Permitted Uses

- a. Conservation of land, water, wildlife, vegetation, and other natural features and values.
- b. Facilities deemed by the Secretary of the Interior to be necessary for the administration and public use and enjoyment of the Cape Cod National Seashore.
- c. Recreation, including but not limited to hunting, fishing, swimming and boating.
- d. Gardening and traditional agricultural uses of cleared land, but excluding such objectional uses as a piggery or the commercial raising of livestock, fur-bearing animals and poultry, or other uses injurious, noxious or offensive to the neighborhood.
- e. Traditional commercial fishing activities, the opening of shellfish, and storage and use of fishing equipment.
- f. Uses of existing dwellings as residences and accessory uses customarily incidental to the principal residential use on the same premises, providing such uses are not detrimental to a residential neighborhood and do not alter the essential character of the dwelling as a residence. Residential uses of dwellings may include the renting of rooms and furnishings of board by residents of the premises to overnight guests, if such uses do not alter the essential character of the dwelling as a residence.
- g. Customary or self home occupations as defined in Section II. Paragraph 1, but this shall not include the use of accessory structures as stores or for the display of goods to the passing public.
- h. Moving, alteration, enlargement, maintenance, or repairs of existing one-family residential dwellings or the erection of customary structures which will be accessory to the existing principal residential use provided that such improvements to existing dwellings and the erection of accessory structures will afford not less than a 50-foot setback from all streets measured at a right angle with the street line and 25-foot distance from the abutters' property lines and further do not alter the essential character of the dwelling as a residence. In appropriate cases, the Board of Appeals may approve lesser set back of side line requirements for improvements to existing dwellings or for the erection of accessory structures, provided they do not alter the residential character of the premises.
- i. Public Utilities.
- j. Religious and Educational use.
- k. Detached one-family dwellings and accessory structures, provided that no lot may be used for their construction which has a frontage of less than 150 feet, and an area of less than three acres, and no dwelling or building may be located in such manner as to provide less than a 50-foot setback from all streets measured at a right angle with the street line and 25-foot distance from abutters' property lines.
- l. The use of signs as defined in Section II, Paragraph 4, with double-faced sign on

property of a residential occupant which shall pertain to the occupancy, sale, or rental of such property as herein authorized and such sign shall not exceed two square feet in area and shall not be of a type or style employing or using neon, fluorescent, or other direct illumination; provided, that the above limitations shall not apply to facilities deemed by the Secretary of the Interior to be necessary on federally owned property for administration and public use and enjoyment of the Cape Cod National Seashore.

2. Except as provided above there shall be in the Seashore District:
 - a. No burning of cover unless determined by the Board of Fire Engineers to be necessary for the welfare and safety of the Town and then such burning shall be in accordance with the requirements of Section 13, Chapter 48 of the General Laws.
 - b. No filling of land, dumping, nor removal of soil, loam, sand, or gravel.
 - c. No cutting of timber except:
 - (1) By an owner for the purpose of reasonably controlling brush or trees;
 - (2) Maintenance cutting in pastures;
 - (3) Cutting for clearance or maintenance on rights-of-way including those pertaining to public utilities or public highways.
 - d. No building or structures.
 - e. No commercial or industrial venture or activities.
 - f. No drainage, damming or relocation of any water course except by a publicly authorized agency for the purpose of pest control.
 - g. No continuous storage of materials or equipment.
3. Provisions relating to Variances and Exceptions:

Applicants for variances or exceptions shall be promptly notified by the Board of Appeals that the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, property which is made the subject of a variance or exception that, in his opinion, fails to conform or is in any manner opposed to or inconsistent with the purposes of the Cape Cod National Seashore. The Secretary of the Interior shall be given notice by the Board of Appeals, of all applications or petitions made for variances or exceptions to the by-laws for the Seashore District and he shall be provided notice by the Planning Board of all applications for building permits involving the Seashore District within seven (7) days of receipt of the applications or petitions. Subsequently, the Secretary shall be given notice by the appropriate board of any variance, or exception, or building permit, granted or denied for the area within the Seashore District. (2/63)

SECTION VIII — GENERAL REGULATIONS

VIII-A Non conforming uses

No premises in the Town of Truro shall be used under the following conditions:

1. For any purpose of a junk yard, or storage of used motor vehicles or other equipment used as junk.
2. For the purpose of a commercial tenting camping area, or a trailer park.

VIII-B Continuation of non conforming uses

Any building or part of a building, lot or parcel of land at the time of the adoption of this

By-Law or any amendment thereto, being put to a non conforming use, may continue to be used for the same purpose. Such non conforming uses may, upon the approval of the Board of Appeals, be extended throughout the premises. A non conforming use which has been abandoned for the period of one year, shall not be re-established, and any future use shall conform to this By-Law.

VIII-C Parking Requirements

Any building hereafter constructed for business uses shall be so located upon its parcel of land that there may be provided an off-street parking area equal to twice the floor area of the building to be constructed.

SECTION IX — AREA REGULATIONS

1. No building except building for accessory use, or cottages as defined in Section II, Paragraph 2, shall be constructed on a lot or parcel of land with a frontage of less than one hundred and fifty (150) feet on a public, private or approved way, nor with an area of less than twenty two thousand, five hundred (22,500) square feet.
2. Any lot or parcel of land having an area or frontage of lesser amounts than required by this By-Law may be considered as coming within the requirements of this section, provided such lot or parcel of land was shown on a subdivision plan, or described by deed duly recorded or registered in the Barnstable County Registry of Deeds prior to the adoption of this By-Law and provided such lot or parcel of land has an area of not less than five thousand (5000) square feet with a frontage of not less than fifty (50) feet.
3. No building or part thereof, including buildings for accessory use, cottages as defined in Section II, Paragraph 2, shall be constructed within twenty five (25) feet of any side line, including front and rear lines of any lot.
- 3a. No building or part thereof, including buildings for accessory use, cottages as defined in Section II, 2 shall be constructed within five (5) feet per each story of the building of any sideline, including rear lines of any lot in that part of the Limited Business area, defined in Section III-B, 5, which is on the Town of Provincetown Water System. (2/63)
4. Units in Cottage Colonies and Motor Courts shall be located not less than thirty (30) feet apart from one another, and shall provide two hundred and fifty (250) square feet per unit, for off-street parking.

SECTION X — ADMINISTRATION

X-A Enforcement

This By-Law shall be enforced by the Board of Selectmen. No building shall be built or altered and no use of land or building shall be begun or changed without a permit having been issued by the Town of Truro Planning Board. Such permit shall be posted in a conspicuous place on the premises. Any person violating any of the provisions of this By-Law may be fined not more than twenty (\$20.00) dollars for each offense. Each day that such a violation continues shall constitute a separate offense.

X-B Board of Appeals

A Board of Appeals shall be established consisting of three members and two associate members, and said Board of Appeals shall have all the powers conferred on it under the

provisions of Chapter 40-A of the General Laws and any amendments thereto. The Board of Appeals may grant variances from the provisions of this By-Law upon appeal or petition under the provisions of Chapter 40-A of the General Laws or any amendments thereto.

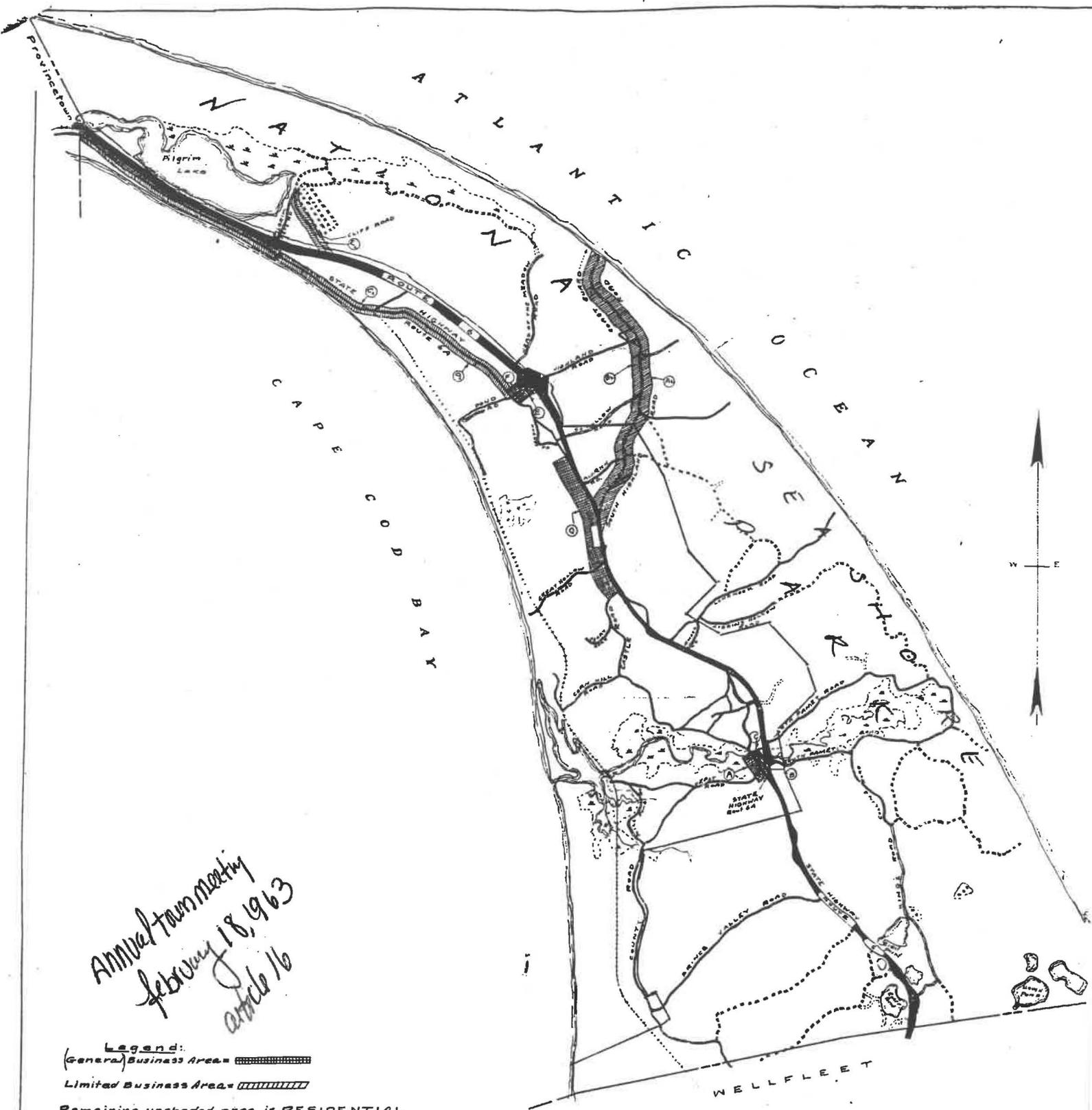
X-C Amendment

This By-Law may be amended from time to time at an annual or special Town Meeting in accordance with the provisions of Chapter 40-A of the General Laws and any amendments thereto.

SECTION XI — VALIDITY

XI-A This By-Law shall not interfere or annul any By-Law, rule, regulation or permit, provided that unless specifically excepted where this By-Law is more stringent, it shall control.

XI-B The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.



*Annual town meeting
February 18, 1963
Article 16*

Legend:
 (General) Business Area = [grid pattern]
 Limited Business Area = [diagonal line pattern]
 Remaining unshaded area is RESIDENTIAL

Boston, Mass., June 11, 1963
 The within zoning map is hereby approved.

Edward W. Brooke
 Attorney General

Approved:

 Truro Planning Board.

OFFICIAL ZONING MAP
 TOWN OF
TRURO
 Scale: 1 inch = 2000 feet
 Accepted at a Town Meeting
 held February 18, 1963
 Attest: *Thomas A. Gault*
 Town Clerk
 Drawn by W. G. Slade, Reg. Land Surveyor
 Truro, Mass.

DESCRIPTIONS OF ZONING AREAS

As authorized under the ORIGINAL Zoning By-Laws accepted at the annual Town Meeting held on February 15, 1960, under Article 23.

GENERAL BUSINESS

AREA (A)

All the land contained in the following area which is bounded and described as follows: Beginning at a point on the southwesterly side-line of the old State Highway, 1925 layout, which point of beginning is located from the hereinafter reference point on a bearing of North 53°-14'-36" West at a distance of one hundred seven (107) feet. Said reference point is a Massachusetts Highway Bound at the intersection of the westerly side-line of the State Highway, 1950 layout and said old State Highway, 1925 layout and bears South 89°-40'-24" West from station 117 plus 82.28 of the main base-line of said 1950 State Highway lay-out and one hundred eighteen and 56/100 (118.56) feet therefrom;

From said point of beginning the area runs in a general northerly direction, following the westerly side-line of said old State Highway and three hundred (300) feet in width throughout, measured perpendicular thereto and three hundred (300) feet therefrom, ending opposite station 138 plus 78.44 of the said 1925 State Highway base-line.

AREA (B)

All the land contained in the area bounded on the East by the State Highway, 1950 layout;

On the West by the State Highway, 1925 layout, and

On the North by South Pamet Road as laid out by the Commonwealth of Massachusetts for the Town in 1951.

Said area is nearly triangular in shape and is less than three hundred (300) feet at its widest point.

AREA (C)

All the land contained in the area bounded as follows: beginning at the intersection of the easterly side-line of the old State Highway, 1925 layout and the northerly side-line of South Pamet Rd. and runs thence northerly by the said easterly side-line of said State Highway 1925 layout, to a point where said highway side-line intersects the location of the old North Pamet Road, a Town Way;

Thence easterly by the location of said old North Pamet Road to a point which is three hundred (300) feet distant from the said easterly side-line of the State Highway 1925 layout, as measured perpendicular thereto;

Thence southerly on a line, parallel with said State Highway (1925) layout side-line, to a point where it intersects the westerly side-line of the State Highway (1951 layout) Route 6;

Thence southerly, southwesterly and westerly by said State Highway (1951 layout) and by said South Pamet Road, side-line to the point of beginning.

AREA (D)

All the land contained in the area bounded as follows (WITH THE EXCEPTION): Beginning at a point on the westerly side-line of the State Highway, 1951 layout (Route 6) at the northerly side of Castle Road (a Town Way) and running thence westerly by said side of Castle Road to a point which is five hundred (500) feet distant from the said State Highway side-line and measured radially thereto;

Thence running in a general northerly direction, parallel and concentric with the said westerly side-line of the State Highway, and five hundred (500) feet distant therefrom, to a point opposite station 294 plus 63.37 of the 1925 State Highway base-line (Route 6A) and five hundred (500) feet westerly from the side-line thereof;

Thence easterly on a line perpendicular to said Highway, 1925 layout (Route 6A), five hundred (500) feet to a point on said State Highway (Route 6A) side-line opposite said station 294 plus 63.37 of said baseline;

Thence in a general southerly direction by the westerly side-line of the State Highway (Route 6) to the point of beginning by Castle Road.

EXCEPTING from the above described area a parcel of land, opposite the Truro Central School, having a frontage on the State Highway about equal to that of the said school lot and bounded and described as follows;

Commencing at a Massachusetts Highway bound on the westerly side of the said State Highway (Route 6) opposite station 239 plus 16.12 of the 1951 State Highway layout base-line and running thence South 81°-04'-59" West, for a distance of two hundred and fifty (250) feet;

Thence turning and running on a general northerly direction, parallel with the westerly side-line of said State Highway and two hundred and fifty (250) feet distant herefrom to a point opposite Station 247 plus 76.50 of said State Highway base-line;

Thence North 81°-04'-59" East, a distance of two hundred and fifty (250) feet to a Massachusetts Highway Bound located on the Westerly side of said State Highway and being opposite said Station 247 plus 76.50;

Thence turning and running Southerly by the Westerly side-line of said State Highway, which is on a bearing of South 8°-55'-01" East, to the point of beginning, a distance of eight hundred sixty 38/100 (860.38) feet.

AREA (E)

All the area contained in a strip of land on the Southeasterly side of the Highland Road in the Village of North Truro three hundred (300) feet in width throughout bounded on the west by the State Highway 1925 layout, (Route 6A), on the North by said Highland Road as laid out by the Commonwealth of Massachusetts for the Town of Truro in 1953; and on the East by the State Highway 1953 layout.

AREA (F)

All the area contained in a strip of land three hundred (300) feet wide on the Northerly side of the Highland Road in the Village of North Truro and bounded on the West by the State Highway 1925 layout (Route 6A); on the South by said Highland Road as laid out by the Commonwealth of Massachusetts for the Town of Truro in 1953 and on the East by the State Highway, 1953 layout.

LIMITED BUSINESS

AREA (AL)

All the Area contained in a strip of land three hundred (300) feet wide located along the Southeasterly and Easterly side-line of South Highland Road, said area beginning at the Easterly side-line of the State Highway, 1951 layout (Route 6) and following the said sideline of the South Highland Road, three hundred (300) feet in width throughout, in a general Easterly and Northerly direction to the intersection of said South Highland Road and Highland Road;

Thence continuing in the same direction along the Easterly side of said Highland Road to the intersection of said Highland Road and Coast Guard Road;

Thence continuing in the same general direction along the Easterly side-line of said Coast Guard Road to the terminus thereof at the Atlantic Ocean, holding the width of three hundred (300) feet throughout.

AREA (BL)

All the Area contained in a strip of land three hundred (300) feet wide along the Northwesterly and Westerly side of South Highland Road, said area beginning at the Easterly side-line of the State Highway, 1951 layout, (Route 6) and following the Westerly side-line of said South Highland Road in a general Easterly and Northerly direction and three hundred (300) feet in width throughout, to the intersection of said South Highland Road and Highland Road:

Thence continuing along the Westerly side-line of said Highland Road to the intersection of Coast Guard Road;

Thence continuing in the same general direction along the said side-line of Coast Guard Road to its terminus at the Atlantic Ocean and holding the width of three hundred (300) feet throughout.

AREA (CL)

All the Area contained in a strip of land one hundred fifty (150) feet wide along the Easterly and Northeasterly side of the State Highway, 1925 layout, (Route 6A) extending from Grozier Square in the Village of North Truro to the Provincetown Town Line, said area beginning at the Northerly terminus of the (General) Business Zone (Area F) on the Easterly side of said State Highway (Route 6A) follows the said side-line of said State Highway, holding the width of one hundred fifty (150) feet throughout, to the intersection of said State Highway with the Provincetown Town Line.

AREA (DL)

All the Area contained in a strip of land one hundred fifty (150) feet wide along the Westerly and Southwesterly side of the State Highway 1925 layout (Route 6A) from Grozier Square in the Village of North Truro to the Provincetown Town Line, said area beginning at the Northerly side of Pond Road in said Village and at the Westerly side of said State Highway, follows the said side-line of said State Highway, holding the width of one hundred fifty (150) feet throughout, to the intersection of said State Highway and the Provincetown Town Line.

AREA (EL)

All the Area contained in a strip of land one hundred fifty (150) feet wide on either side of Cliff Road in the locality of Pilgrim Heights, and extending from the intersection of said Cliff Road with the Southerly side of Pilgrim Heights Road, also called High Head Road, in a general Southerly direction following said Cliff Road and one hundred fifty (150) feet on either side thereof to a point where said Cliff Road changes direction;

Thence continuing in a general Southerly direction, following the above alignment of Cliff Road produced and holding the width of said Cliff Road and one hundred fifty (150) feet either side, to the intersection with the Northerly side of the State Highway, (Route 6).

All land remaining in the Town of Truro not described as within the limits of the (General) Business Zone or the Limited Business Zone is Zoned as RESIDENTIAL.

LAW OFFICES OF
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MEMORANDUM

To: Truro Zoning Board of Appeals
From: William C. Henchy
RE: 100 Route 6; Appeal No. 2023-006
Date: November 6, 2023

Removal of Materials from the Site

Following the last meeting of the Board of Appeals, Mr. Martin has begun to remove materials from 100 Route 6 in order to show good faith while the matter is being addressed.¹

The following materials have been removed:

10/25/23	24 Yard Loam, 30 yards shells
10/26/23	24 Yards Loam 6 yards shells
10/28/23	24 yards loam / compost, 36 yds shells
10/26/23	6 yards shells
11/3/23	18 yards shells
11/4/23	48 yards shells; 4 yards/ 6 tons ¾" stone 20 yards woodchips
11/5/23	18 yards shells, 30 yards of hardener, 60 yards woodchips

In addition, Mr. Martin has covered or removed all signs.

¹ By removing materials, Mr. Martin is in no way waiving any claims or conceding that he is in violation of the Zoning by-law.



TOWN OF TRURO
HEALTH & CONSERVATION DEPARTMENT
24 Town Hall Road, Truro 02666
508-349-7004 x119

To: Truro Board of Health
From: Emily Beebe, Health & Conservation Agent 
Date: November 6, 2023
Re: Update on 100 Route 6 -- Jack's Gas station site

The release of gasoline from an underground tank at this property was reported to the DEP in 1998 and from that period, the contamination was evaluated, and the groundwater remediated to remove as much contamination as possible. The monitoring wells on the site are sampled and analyzed annually and have shown concentrations of hydrocarbons that exceed the drinking water standards; however, it was determined that there are no imminent health risks associated with the contamination, and it is therefore no longer actively being mechanically remediated.

The site is currently mapped by the DEP as a "closed site", but final closure will only happen when the hydrocarbon concentrations dissipate to levels that do not exceed drinking water standards, and the DEP has determined that the site has reached permanent solution status.

Waste Site & Reportable Releases Information

Related links

Supporting Documents

(<https://eeaonline.eea.state.ma.us/EEA/FileViewer/Rtn.aspx?rtn=4-0013690>)

LSP Lookup

Site Number ?

4-0013690

Category ?

72 HR

Site Name ?

JACKS GAS

AUL Info ?

Compliance Status ?

RAO

Address ?

100 RTE 6

Compliance Date ?

09/02/2010

Town ?

TRURO

Phase ?

PHASE V

Zip Code ?
02666

RAO Class ?
TF

Official Notification Date ?
02/23/1998

Location Type ?
COMMERCIAL

Initial Status Date ?
02/23/1999

Source ?
UST

Response Action Information

RESPONSE ACTION TYPE	STATUS	SUBMITTAL DATE	RAO CLASS	ACTIVITY & USE LIMITATION DATE
RAO Response Action Outcome - RAO	IMRCD Post-RAO C Status Report Received (Ph V-prior to 05 only)	08/24/2023	TF	
IRA Immediate Response Action	CSRCVD Completion Statement Received	09/02/2010		
PHASEV Phase 5	CSRCVD Completion Statement Received	09/02/2010		
PHASIV Phase 4	CSRCVD Completion Statement Received	02/27/2004		
PHASII Phase 2	CSRCVD Completion Statement Received	08/26/2002		
PHSIII Phase 3	CSRCVD Completion Statement Received	08/26/2002		
TCLASS Tier Classification	PEREFF Permit Effective Date (retired)	07/22/2002		

PHASE I Phase 1	CSRCVD Completion Statement Received	02/26/1999		
RNF Release Notification Form Received	REPORT Reportable Release or Threat of Release	05/05/1998		
RNF Release Notification Form Received	REPORT Reportable Release or Threat of Release	03/16/1998		
REL Potential Release or Threat of Release	REPORT Reportable Release or Threat of Release	02/23/1998		

Chemicals

CHEMICAL	AMOUNT	UNITS
GASOLINE	100.000	PPM

LSPs

LSP	LSP NUMBER
Pierdinock, Michael J	4078
Salvetti, Joseph P	9546

RAO Detail

CLASS	METHOD	GW CATEGORY	SOIL CATEGORY
TF	1		

Tier Classification Detail

NRS TOTALS	II	III	IV	V	VI	ZONE 2	IMMINENT HAZARD
378	115	93	85	85	0	N	N

Location

+

-

