

**TOWN OF TRURO  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
September 10, 2020  
Remote Meeting**

**Members Present:** Chair-Art Hultin, John Dundas, Fred Todd, Chris Lucy, John Thornley, Alternate-Darrell Shedd, Alternate-Heidi Townsend

**Others Present:** Atty. Barbara Huggins-Carboni, Pamela Wolff, Jessica Snare, John O'Reilly, Mark Nelson, Anne Greenbaum, Ted Malone, Pamela Wolff, Michael Carabetta, Betty Gallo

Atty. Huggins-Carboni read off instructions for citizens interested in how to join the meeting.

Chair Hultin called the meeting to order at 5:30pm.

Jessica Snare noted that Ted Malone's computer crashed, and he was working on joining the meeting.

**Review of Comments**

- **Public Comments from Truro Planning Board**
- **Public Comment letter from Highland Affordable Housing**
- **Public Comment letter from Curtis Hartman**

Chair Hultin began the discussion by stating that the Planning Board has some specific things that they are bringing to the ZBA's attention. If they go through them one at a time the ZBA will get an understanding of where the Planning Board is coming from.

#1-Under Health and Safety Concerns, the Planning Board states that there is not a safe pedestrian path from Highland Road to the development, and that pedestrians would have to cross the entrance roadway to the project. Chair Hultin does not agree and he does not find the statement regarding pedestrians having to cross the entrance roadway to be unusual. Member Todd referenced a map that the Planning Board provided, which shows an expansion to the pedestrian path to include a loop around the entire project. Member Shedd likes the idea of the sidewalk going all the way around. He asked the applicant to address the what the economic impact would be to adding more sidewalks. Ms. Snare stated that she could not come up with a dollar amount right now, and then asked if the Board would then expect the sidewalk to be on both sides of the one-way street. Mr. O'Reilly gave a summary of where sidewalks and crosswalks are currently located on the plan. He listed the issues with increasing the sidewalks to the exterior of the site. Additional conversation between Board members was had. General consensus was that the additional sidewalks proposed in the drawing by the Planning Board were not necessary.

#2-The Planning Board contends that if the sidewalk down to Highland Road is snow or ice covered, pedestrians will be forced to walk in the street. While Chair Hultin doesn't disagree with that statement, he said that it's a part of living in New England. Member Lucy stated that the Town would be maintaining the road in terms of snow. Member Lucy works for the DPW and noted that whenever it's icy or snowing, they go out first thing in the morning to sand the area to ensure people don't slip and fall.

#3-There is no parking plan provided. Chair Hultin believes the landscaping plan could be titled "Landscaping and Parking Plan". Mr. O'Reilly stated that the spaces delineated on the landscape plan are also shown on the site plan sheet 1 of 6.

#4-There are eleven obstructed spaces. Mr. O'Reilly thinks what the Planning Board is talking about are the spaces for the six duplex buildings that surround the center court. There are four parking spaces (2 for one building and 2 for the next-door building). Those four spaces are meant to be a driveway for the occupants of the building. It is not of the intention that someone would park there that is not associated with that unit. Chair Hultin asked if there was any space on the site plan where a couple more parking spaces could be squeezed in. Mr. O'Reilly stated that the number of parking spots has been maxed out. If he were to look for locations, he'd look at the center area where guest parking spots are. They'd have to make them perpendicular vs. on an angle. He added that this led into the next concern from the Planning Board.

#5-This concern has to do with the approximately 20 spaces which back directly onto the driveway at a 90-degree angle, and the width of those spots. Mr. O'Reilly stated that they did angled parking in the center is because they are for guests and overflow parking. They can back up and go. The tenant parking spaces are perpendicular. If they have perpendicular spaces on both sides, they will need to widen those spaces to provide maneuverability. Mr. Malone feels that the amount of parking they already have is adequate. Subsequent discussion with the ZBA determined that the Board feels the parking is sufficient. Chair Hultin asked Mr. Malone what type of parking enforcement there would be. Mr. Malone said that each unit will receive its assigned parking space/spaces along with a rear-view mirror hang tag. Said hang tag will have a unit number and vehicle license plate number. Each resident will also receive a guest tag. The maintenance staff that visit the property will look for violations. More likely than not a resident will call and state that there is a vehicle that they do not recognize.

#6-Wastewater. Chair Hultin is not sure what the Planning Board was trying to convey with this comment. The Planning Board is in support of the Board of Health in their decisions. Chair Hultin wished to move forward.

On a separate note, Member Thornley feels the contingency plan is very optimistic. It does not incorporate any sort of problems which may arise.

#7-The Planning Board is concerned with the density of this site and supports the ZBA discussing a potential reduction in the number of units to address their concerns. Chair Hultin stated that if the applicant did decide to reduce the number of units, he would be supportive of that. As a condition of approval though, he does not see the need for it. He is prepared to move forward with the number of units proposed in the plan. Member Shedd stated that this project is for affordable housing, regardless of the discussion on how many units may or may not be built. After spending so much time on the design, he does not see much difference between 30-40 units versus what's been proposed. He supports the number of units as proposed. Member Todd agrees with Member Shedd's statement.

#8-The Planning Board strongly recommends the denial of request for waiver of requirement to post a bond, Letter of Credit, or impose Planning Board Covenants, related to site development. This is a protection for the Town and the future residents of the Cloverleaf and is required for a subdivision of any size. Chair Hultin said that in the memorandum from Atty. Huggins-Carboni it states that they would like some sort of bond, or way to secure the total concept of this project. It is Chair Hultin's opinion that they should not waive all requirements for lack of a bond. Member Shedd stated that a bond will

certainly be required by the contractor who does the project. He is not sure it's clear if a waiver is needed because there will be a bond. Mr. Malone reminded the Board that the entire project will be subject to a deed restriction that encompasses everything that is decided in the ZBA's proceedings. Atty. Huggins-Carbone stated that the bond, or other surety that is discussed in the Subdivision Rules and Regulations is to ensure completion of the roadways, utilities, and aspects of the project that in any large development is a protection to the Town that these project elements get completed. The fact that any individual contractor is bonded with respect to their own work is not a substitute for a performance bond to ensure the completion of infrastructure. The fact that there might be conditions in the permit that the work has to get done is not a substitute for a performance bond. Chair Hultin asked if there were a way to know the dollar amount of such a bond should be. Atty. Huggins-Carbone stated that they should ask DPW Director Cabral. There was some discussion on what a performance bond will do. Mr. Malone would like to check with his legal counsel on this. He stated he's never been required to post a bond as the developer. Mr. Malone will check and report back. Member Shedd stated that as he understands it, a contractor's performance bond is what protects the Town. Atty. Huggins-Carbone believes that having the developer bonded is another layer to protect the Town. Chair Hultin asked if Town Counsel could be the ones to provide the necessary information to get to a conclusion on this topic. Atty. Huggins-Carbone can have a conversation with Mr. Malone's lawyer.

#9-Per the Planning Board memo, they recommend the denial of the following two waiver requests as they are too broad. The Applicant should identify specific regulations he is requesting waiver of. Chair Hultin asked Planning Board Chair Greenbaum to comment on the two bullet points.

- Relief is requested from any other zoning bylaw, general bylaw or regulations or procedures that may be identified in the review process if full compliance is not physically or economically feasible.
- Relief is requested from the applicability of such other sections of the Zoning By-Law, the Subdivision Control Regulations, or of such other local rules and regulations that would otherwise be deemed applicable to this development.

Planning Chair Greenbaum stated that the Planning Board's position is that both of those waivers are much too broad. There should not be blanket waivers. The Applicant should be specific on exactly what they are requesting a waiver of so the ZBA can make an informed decision. Member Lucy stated he thought with this coming to the Board as a 40B it would bypass zoning regulation. From discussion held today, it looks like the Planning Board wants this to go through subdivision regulation review, site plan review and compliance with the Regional Policy Plan and the Comprehensive Plan. His understanding was as the result of the project being a 40B, it bypasses all of that. Atty. Huggins-Carbone stated that under 40B the Board has the authority to waive any bylaw and any local regulation but 40B does not require a Board to waive the zoning bylaw in its entirety. It has the Board look at each waiver the Applicant asks for and considers whether to grant it or not. When they get to the waiver portion, she believes the Board will be able to exercise that discretion the way 40B intends it to be.

Another discussion was held regarding the Planning Board's recommendation of receiving cross sections of the buildings. Per Ms. Snare, cross sections were submitted during the time of the balloon test. Chair Hultin does not personally feel the cross sections outlined in the Planning Board's memo are needed. Member Todd does remember the cross section plans that were presented and personally finds them hard to evaluate. He does not recommend they do them again. Member Townsend remembers the cross sections because she recalls how unobtrusive they were.

Chair Hultin read the letter from Highland Affordable Housing.

Chair Hultin read the email which Curtis Hartman sent.

**Public Hearing – Continued**

**2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land area.**

**Peer Review and response**

Mr. Nelson ran through a summary of the last peer review. He went over the key issues that Horsley Witten is still working on with Mr. O'Reilly. Mr. Nelson stated that there are three overarching issues he wanted to go over and proceeded to go through those. Mr. O'Reilly also summarized explanations regarding comments made by Horsley Witten.

The bottom of the third peer review letter by Mr. Nelson mentions not all parking spaces have been graded and there are dashed lines that indicate double-stacked overflow spaces. Chair Hultin asked Mr. O'Reilly to comment on that notation. Mr. O'Reilly stated the intention of the dashed lines is to be gravel. They have been incorporated and graded as part of the grading plan and the area is part of their drainage improvements. With regards to handicapped spaces, those will be on the paved portions. Mr. Nelson gave Chair Hultin an explanation regarding what he meant by "graded".

**Roof Line Revised Plans for solar panel/shingles installation**

Mr. Malone stated that the footprint interior is the same as presented earlier. This was an effort to make some architectural revisions that would help the solar capacity on the roof. Ms. Snare not only believes this will improve the amount of the more efficient solar panels she also feels confident that the flat roof will make the panels almost disappear from view.

Mr. Malone then spoke about the building heights. The building that still requires a waiver is building 21. Member Todd likes the new roof proposed on building 21. Member Dundas agrees with Member Todd, although the flat roof design worries him when it comes to snow (he also stated that Cape Cod does not encounter the amounts of snow NH gets). Member Townsend likes the design as well. Member Shedd noted that the Board took a straw poll at their last meeting and thought that they agreed they liked the hip roof design for building 21. He personally likes the hip roof design on the wings of building 21 but he is okay with this flat roof design. Member Thornley thinks the site plan puts all the emphasis on building 21 and he feels it's a little drab. He does accept what they had to do with the roof design though. Member Lucy is not a fan of it either and he agrees with Member Shedd on the fact that the Board did do an informal poll regarding the hip roof design. A pitched roof is more in keeping with the rural character of Cape Cod. He asked, at what point if the roof is raised does it become a gable roof? Member Lucy added that if the Board likes what they see then he's impartial.

Chair Hultin wished to take a 5-minute recess at 7:45pm and continue the meeting at 7:50pm.

Chair Hultin would like to change the order of agenda items and go directly to public comment. Board members agreed.

## **Public Comment**

**Caller-Pamela Wolff**

She's counted up the waivers and there are twenty-four. She's concerned about the sidewalk situation. Since there is no playground, the sidewalk gives children a place to play without being in the street. Ms. Wolff asked Chair Hultin to clarify the lot size to which Chair Hultin replied that the size is 3.91 acres. She asked if there was a bond posted for Sallie's Way? Mr. Malone stated that the contractor posted bonds, the developer did not have to. Ms. Wolff pointed out that the information gives some precedent to the Town for this project. She asked about the amount of the bond and wanted to know if that would be agreed upon between Mr. Malone and the ZBA. Mr. Malone has not seen a number and assumes it's in relation to the cost of construction. Ms. Wolff would like to know if that number will be forthcoming in the future. Chair Hultin stated that if there is going to be a bond required then yes, there will be a dollar amount for the bond and that will be known before a permanent vote is taken. Ms. Wolff noted that in the past, the Truro Conservation Trust worked hard to preserve the view along the Route 6 corridor, and she hopes the Town will continue to recognize the concept of the Route 6 corridor. She asked if the water going to the site would be metered as a whole or would the individual residences have water meters? Mr. Malone explained that the meters on the two-family buildings will either be individually metered or there will be one shared meter per building. That is a requirement of the water department. Mr. O'Reilly stated that there are individual water services to each building. He believes the water department would dictate whether to break it down individually per unit. Ms. Wolff wanted to know if the Town was expected to pay for the water. Mr. Malone stated that the property owner will pay the water bill. Ms. Wolff likes the new roof concept for building 21.

**Caller-Michael Carabetta**

He's heard that the elevator is going to be 4 to 5 feet above the flat roof and that there might possibly be air conditioning units on the roof of building 21 as well as solar panels. He asked why the Board would be reviewing this without knowing all those details and what will the top of the roof look like from Route 6? Will it look like an industrial plant? Chair Hultin stated he was at the site visit during the balloon test and even at the higher elevation of the roof that was proposed at that time you cannot see the top of that building from Route 6 at all. He continued, saying that's not to say you won't see other buildings from Route 6 a little bit but it's very minimal. Mr. Carabetta asked if the Board would control the height of the elevator shaft and the air conditioning vents to make sure that doesn't occur? Ms. Snare did not have exact measurements but said that it will fall within the top of the parapet.

**Caller-Betty Gallo**

She stated that these homes in the Cloverleaf are being built for the townspeople's neighbors. State law allows for local preference up to 70% of the units in the project. The State allows people to qualify for local preference if they are a member of a household of which one member lives in Truro, the family of a child in the Truro schools, a Truro employee or an employee of a Truro business. When Sallie's Way's units were first rented, 15 of the 16 units went to people from Truro, Wellfleet, or Provincetown. There is a real need for year-round rental housing that is affordable. She believes the Cloverleaf will help provide homes.

## **Truro Cloverleaf Rental Housing Property Management Plan**

Atty. Huggins-Carboni has reviewed the plan and believes it's quite satisfactory. She understands there are some similarities with Sallie's Way so she thinks if the Board has any questions about particular functions of managing the property, they could ask Mr. Malone and his team. Mr. Malone wished to

point out that when it was suggested that it might need peer review and it already has been, through the State Department of Housing and Community Development who is the subsidizing agency. It covers all the issues the State Department is worried about. Chair Hultin had a question regarding the language. He asked, at what point does Community Housing Resources Inc. and Community Development Partnership meld into this agreement? Mr. Malone explained that there's been a multi-year effort between the CDP, Community Housing Resource and their State funding Massachusetts Housing Partnership to create a property management capacity on the Outer Cape. Chair Hultin asked if the plan described the eventuality of ownership? How is Mr. Malone's ownership eventually transferred to someone else? Mr. Malone stated he did not know that yet, it's something that has to be approved by the funders. It's something they've been looking at because Mr. Malone knows he will not be here forever. This plan anticipates future collaboration. Atty. Huggins-Carboni asked where in the plan does the limited dividend organization the 40B requires fit in? Mr. Malone states the plan identifies the ownership entity (it's not yet a formed entity) in the beginning as CHR Cloverleaf Limited Partnership.

Chair Hultin stated that he's relying on Atty. Huggins-Carboni to review the plan to be sure there is nothing in it that strikes her as being not good for the Town. Atty. Huggins-Carboni said that some of what's in the management plan is out of the reach of the ZBA, but she will be reviewing it as part of the process.

Mr. Malone stated he would do research regarding the mechanical equipment on the roof. Atty. Huggins-Carboni asked that once Mr. Malone had more information that he send her a revised table which he had prepared addressing the waivers he'd need for height.

Discussion was held regarding scheduling their next meeting.

**Member Townsend made a motion to continue the Public Hearing 2019-008 ZBA-Community Housing Resource, Inc. to Thursday, September 24, 2020 at 5:30pm.**

**Member Thornley seconded.**

**So voted; 5-0-0, motion carries.**



**Respectfully Submitted,  
Noelle L. Scoullar**

