ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
ZBA MINUTES
MONDAY, SEPTEMBER 28, 2015
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO

QUORUM PRESENT: B. Perkel (Chmn); A. Hultin; F. Todd (Clerk); J. Thornley, J. Allee, (Recused: J. Dundas, Alt., N. Brown, Alt.) Also present: S. Kelly, Recording Sec.

Meeting opened at 7:02 by Chairman Perkel.

-- Minutes of June 22, 2015 accepted as written on a Motion by Ms. Allee, 2nd by Mr. Todd, 5/0, Unanimous;
-- Minutes of July 27, 2015 (Regular), approved (Exec. Held), on a Motion by Mr. Perkel, 2nd by Mr. Hultin, 5/0, Unanimous
-- Minutes of August 24, 2015, approved on a Motion by Mr. Todd, 2nd by Ms. Allee, 5/0.

Continuation: 2015-010/ZBA – Michael Tribuna, for property at 7 Parker Dr., (Atlas Sheet 39, Parcel 171). Applicant is appealing the decision of the Building Commissioner to issue Notice of Zoning Bylaw Violation and Order to Cease, Desist and Correct, as continued from July 27, 2015 and August 24, 2015,
Chairman Perkel noted they had a received another request from Mr. Tribuna's attorney to continue the petition one month to the October meeting. A Motion was made by Mr. Hultin, 2nd by Mr. Todd, to grant a continuation to October 26, 2015 at 7 PM at Truro Town Hall. 5/0, Unanimous.

Atty. Murphy was present with surveyor Chet Lay regarding the Dyer petitions. Atty. Murphy requested the order of the petitions be changed to present the Nancy Dyer petition first. Since there were no objections, the following petition was heard:

2015-013/ZBA – Nancy A. Dyer, (Trustee of Dyer Realty Trust), for property located at 8 Sam's Way, (Atlas Sheet 24, Parcel 13), Reg. of Deeds Title Ref: Bk. 24166, Page 199. Applicant is seeking a Variance w/ref. to Sec. 10.4 of the Truro Zoning Bylaw to authorize lot frontage on a street thirty (30') ft. wide running from 30 ft. wide town Way to cul-de-sac providing frontage with radius (width) of forty (40') feet, as per plans filed.
Atty. Murphy provided background on the lots, noting in 1989 the Town had modified the zoning bylaw definition of street to incorporate 'Design Standards,' which is found in the Planning Board rules and regulations; the Town adopted the requirement of lots being on a 40-ft. wide way and almost no lots met that criteria; public roads did not have to be 40-feet wide; however private roads did have the 40-foot width layout requirement. He noted Knowles Heights Road is 40-ft.-wide; the section of road running to the cul-de-sac is 30-ft. wide, and therefore renders the lot unbuildable. They were requesting a variance to the 15.68 ft. setback, and he explained the mechanism by which Thomas Dyer granted a 10-foot strip of land to Nancy Dyer to enable a 40-ft. layout (from the 30-ft. width). He added Building Commissioner Braun opined the lot line remains the same; in addition the town's attorney, Kopelman and Page, was of the opinion an easement would create a zoning non-conformity; Thomas Dyer has 'interest' in 8 Sam's Way, in that if the easement is granted the lot then becomes a buildable lot; the lot will be 15 ft. off the easement line; he explained why the lot was non-conforming with respect to area and frontage. The continued, the existing house at the adjoining site is about 45 years old; the setback would be from the 15-ft. easement area; nothing would be developed within that 10-ft. parcel; absent the grant of a variance there would be a hardship owing to the topography, shape and placement of the structure on the lot; granting a variance would not be more detrimental. The lot has the same area as the lot with frontage on Knowles Heights Road; the 10-ft. easement is the only change for purposes of measuring setback and one must look at easement not setback. Atty. Murphy also noted the Planning Board has the power to waive the design standard requirement; if it is in the requirements, the only way to alleviate the requirement is to go to the ZBA.

Discussion about the variance and the two separate appeals before the Board; Atty. Murphy explained they needed a Variance by statute. The Nancy Dyer petition asks for a variance to allow the lot to have frontage on a way which is 30-ft. wide. It had been suggested by Counsel the ZBA act on the request for a Variance from the 40-ft. width requirement. Members discussed the requirements for granting a Variance; it was noted the applicant has a financial hardship because of the unbuildable status of the lot which was part of a subdivision created in 1993; because of the 30-ft. section of the road, the lot now becomes unbuildable. There was a 1948 plan reference as well as plans in subsequent years. One single-family residence is proposed; other lots in the area have been developed and the applicant is paying a substantial amount on property taxes even though it is an 'unbuildable' lot.

It was reiterated, even though the Planning Board has the discretion to allow a driveway to be constructed, because of the Design Standards aspect of the bylaw the applicant has to go to the ZBA for relief; the hardship is the shape of the lot which renders it with unbuildable status because of the section of Sam's Way. Atty. Murphy also noted the three different criteria for a Variance: lot shape; soil conditions; topography.

Members concurred the criteria for granting a variance were met; Atty. Russo, representing Nancy Dyer, spoke in support of the petition and noted he hoped they could remedy the situation.

Since there were no other comments, Chairman Perkel said they would take a 10-minute recess at 7:55 PM in order for a draft decision to be composed.

Meeting Reconvened at 8:05 PM.

Mr. Perkel closed the evidentiary portion of the hearing and members discussed the petition. Mr. Todd noted he felt there was a legitimate issue with the shape of the lot and added, it seemed there always meant to be an access to the lot; he added, the failure to grant relief would result in hardship. Other members concurred, and the following Motion was made:

Motion (Todd; 2nd Allee): Move in the matter of Nancy A. Dyer, (Trustee of Dyer Realty Trust), for property located at 8 Sam's Way, (Atlas Sheet 24, Parcel 13), Reg. of Deeds Title Ref: Bk. 24166, Page 199, to grant a Variance with reference to Sec. 10.4 of the Truro Zoning Bylaw to authorize lot frontage on a street thirty (30') ft. wide running from 30 ft. wide Town Way to cul-de-sac providing frontage with radius (width) of forty (40') feet, as per plans filed, with the Findings: (1) The 30-ft.-wide section of Sam's Way was laid out in 1948 on the Samuel Dyer, Jr. Plan; (2) Said 30-ft. wide section of the roadway is approximately 70 feet long and serves as the only access to this particular lot at 8 Sam's Way; (3) The resulting shape of the lot and the fact that the roadway dates from 1948 creates a unique situation to said property different from other properties in the district, and failure to grant relief in the form of said Variance would create substantial hardship for the applicant; (4) Said grant is in harmony with the intent of the Truro Zoning Bylaw and is not substantially more detrimental to the neighborhood.
Voted in Favor: Perkel; Hutlin; Thornley; Allee; Todd. Voted Against: None. Motion Carries: 5/Yes; 0/No. Unanimous.

2015-012/ZBA – Thomas Dyer, (rep of Est. of Samuel Dyer, Jr.), for property located at 21 Knowles Heights Rd. (Atlas Sheet 24, Parcel 11), Reg. of Deeds Title Ref: Bk. 675, Page 545. Applicant is seeking a Variance w/ref. to Sec. 50.1 of the Truro Zoning bylaw to authorize setback of structure to sideline from street of 15.68 ft., while maintaining setback from lot line of 25.68 ft., as per plans filed
Since there had been a request to Withdraw this petition, the following Motion was made:

Motion (Allee 2nd Hultin): Move in the matter of Thomas Dyer, (rep of Est. of Samuel Dyer, Jr.), for property located at 21 Knowles Heights Rd. (Atlas Sheet 24, Parcel 11), Reg. of Deeds Title Ref: Bk. 675, Page 545, to allow the withdrawal of the petition without prejudice.
Voted in Favor: Perkel; Hutlin; Thornley; Allee; Todd. Voted Against: None. Motion Carries: 5/Yes; 0/No. Unanimous.

OTHER BUSINESS

-- Next ZBA Meeting: October 26, 2015, 7 PM at Truro Town Hall.

Meeting adjourned at 8:12 PM.

Respectfully submitted,

Susan Kelly

Susan Kelly

Office of Town Clerk
Treasurer – Tax Collector
11:30am
MAR 22 2016
Received TOWN OF TRURO
By