



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

October 23, 2023 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

TOWN OF TRURO

DEC 08 2023

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Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Art Hultin; Nancy Medoff; Dave Crocker (Alt.); Joseph McKinnon (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Bob Weinstein – Select Board Liaison; Rich Stevens – Building Commissioner; Ben Zehnder (Attorney for Bruce A. Jacobson – Applicant); William Henchy (Attorney for Robert Martin – Applicant); Robert Martin (Applicant); Andrew Aiken (Owner); Lauren McKean (Planner at the Cape Cod National Seashore); Leslie Reynolds (Acting Superintendent of the Cape Cod National Seashore); Stephen Williams (Former Truro Building Inspector and Truro Resident); Kimberly Peters (Applicant); Alison Alessi (Architect for Kimberly Peters – Applicant); Charles Silva (Applicant)

Remote meeting convened at 5:30 pm, Monday, October 23, 2023, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Minutes

Chair Lucy reviewed with the Members the minutes of July 24, 2023, for edits and comments.

Vice Chair Shedd made a motion to accept the minutes of July 24, 2023, as presented.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member Crocker - Aye

Member McKinnon – Aye

Chair Lucy - Aye

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

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Chair Lucy reviewed with the Members the minutes of August 21, 2023, for edits and comments.

Vice Chair Shedd made a motion to accept the minutes of August 21, 2023, as presented.

Member Crocker seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member Crocker - Aye

Member McKinnon – Aye

Chair Lucy - Aye

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

Public Hearings (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks a Variance under M.G.L. Ch. 40A § 10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 9); Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three nonconforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that there was a request for a continuance in this matter until November 20, 2023, and no Members expressed opposition to this request.

Vice Chair Shedd made a motion to continue the matter of 2022-017/ZBA until November 20, 2023.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member Crocker - Aye

Member McKinnon – Aye

Chair Lucy - Aye

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

After the vote, Chair Lucy announced that Building Commissioner Stevens was present for the upcoming matter of **2023-006/ZBA**.

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.

After introducing the matter of **2023-006/ZBA**, Chair Lucy announced that Member Townsend had resigned from the ZBA earlier today so the voting Members on this matter would be Chair Lucy, Vice Chair Shedd, Member Hultin, Member Medoff, and Member Crocker.

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Chair Lucy recognized Attorney Henchy who introduced Mr. Martin and Mr. Aiken. Attorney Henchy then presented detailed historical background about the property with input from Mr. Aiken and Mr. Martin. Attorney Henchy then cited case law decided in the Commonwealth of Massachusetts, in 1966, which applied to this matter. Once Attorney Henchy concluded, Town Planner/Land Use Counsel Carboni stated that she respectfully disagreed with several of Attorney Henchy's legal arguments including the Town of Bridgewater vs. Chuckran.

The following highlighted comments and topics were discussed by the Members and Attorney Henchy: the previous decline and low intensity use of Jack's Gas; the description that Jack's Gas was a country store; the non-enforcement over zoning violations does not mean approval; the Special Permit granted for the property in 2004 is open and valid for 30 years; the sale of wholesale materials previously or currently, landscape sales considered as retail; the distinction between the terms "discontinued sales" or "abandonment"; and the prohibition of storage, materials, and equipment in the National Seashore District; the National Seashore memorandum following the gas spill, fire, and the continued sale of firewood to pay for the rebuild of the structure.

Attorney Henchy and Town Planner/Land Use Counsel Carboni then discussed "non-conforming use" of the property and the implications of the Bylaw and the decided case law.

Members and Attorney Henchy briefly discussed the cease-and-desist order.

Chair Lucy then invited the members of the public to comment on the matter. Chair Lucy recognized Mr. Weinstein who inquired as to why there was no enforcement of the cease-and-desist order. Town Planner/Land Use Counsel Carboni opined that the fines were not accruing or assessed as long as there was no activity on the site. Town Planner/Land Use Counsel Carboni added that she is not responsible for the enforcement of Zoning Bylaw but it is the responsibility of other Town Hall personnel to determine and enforce any violations of the Zoning Bylaw.

Chair Lucy asked Building Commissioner Stevens to comment on why there have not been any fines assessed on the property. At this point, Attorney Henchy objected to Building Commissioner Stevens answering this question as in accordance with the Open Meeting Law a discussion of fine assessment in this matter was not on the agenda and Town Planner/Land Use Counsel Carboni opined that it was permissible as it was related to the cease-and-desist order that was on the agenda. Building Commissioner Stevens made no comment at this juncture.

Chair Lucy noted Attorney Henchy's objection and asked if anyone else from the public wished to comment on this matter.

Chair Lucy recognized Ms. McKean who provided historical background and a summary of their findings in this matter. Ms. McKean noted that the conversion of the site and the current commercial use of the property is unlawful.

Chair Lucy recognized Mr. Williams who commented that there has been an increased amount of Zoning Bylaw violations on the site and the Town should enforce the Zoning Bylaw in this matter.

Chair Lucy recognized Attorney Henchy, who responded to Mr. Williams' comments. Attorney Henchy requested that his materials provided in tonight's presentation be included in the record and there were no objections.

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Member Hultin made a motion to uphold the Building Commissioner's cease-and-desist order, dated May 3, 2023, in the matter of 2023-006/ZBA.

Member Shedd seconded the motion.

After the motion was made, there was a lengthy discussion among the Members, Town Planner/Land Use Counsel Carboni, and Attorney Henchy regarding findings to be amended to the original motion and included the ZBA's decision. Town Planner/Land Use Counsel Carboni opined that findings must be included so the ZBA can provide a basis for why the Members upheld the Building Commissioner's cease-and-desist order. Chair Lucy then asked Members for their input regarding the cease-and-desist order. Town Planner/Land Use Counsel Carboni advised the ZBA to decide tonight with thorough findings to include the sale of firewood and the sale of everything else (such as landscaping material and bulk storage) or to continue this matter to a later meeting to give Town Planner/Land Use Counsel Carboni time to develop findings to present to the Members and then Members can vote and render a decision.

After this discussion, Member Hultin withdrew his motion in this matter.

Vice Chair Shedd withdrew his second on Member Hultin's motion.

Chair Lucy made a motion to continue the matter of 2023-006/ZBA until November 6, 2023, at 5:30 pm.

Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member McKinnon - Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member Crocker - Aye

Chair Lucy - Aye

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

2023-004/ZBA (SPs) - Truro Atlantic View Realty Trust, Bruce A. Jacobson, Trustee for property located at 12 Ocean Bluff Lane (Atlas Map 37, Parcel 6). Applicant seeks: (1) Special Permit to approve construction on non-conforming lot, including (completed) construction unauthorized by earlier permit, and additional square footage; and (2) Special Permit to exceed Gross Floor Area in the Seashore District.

Chair Lucy recognized Attorney Zehnder who asked Chair Lucy which seated Members would vote on this matter as a result of former Member Heidi Townsend's resignation earlier today. Chair Lucy stated that Chair Lucy, Vice Chair Shedd, Member Medoff, Member Hultin, and Member McKinnon would vote on this matter.

Attorney Zehnder then presented a revised plan submitted by the architect and engineer to include the removal of the deck and step on the south side that would decrease the sideline nonconformity. Attorney Zehnder has also submitted a table for the Members to view and a revised elevation.

After a brief discussion among the Members, Town Planner/Land Use Counsel Carboni opined that the Special Permits should be done individually.

Vice Chair Shedd made a motion that in the matter of 2023-004/ZBA a Special Permit be granted under Chapter 40A §6 and Zoning Bylaw 36.7 to approve construction on non-conforming lot, including (completed) construction unauthorized by earlier permit.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member McKinnon – Aye

Chair Lucy - Aye

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

Vice Chair Shedd made a motion that in the matter of 2023-004/ZBA a Special Permit be granted to exceed Gross Floor Area in the Seashore District.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye

Member Medoff - Aye

Vice Chair Shedd – Aye

Member McKinnon – Aye

Chair Lucy - Aye

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

Public Hearing (New)

2023-009/ZBA - Kimberly Peters for property located at 4 Harrier Way (Atlas Map 50, Parcel 263). Applicant seeks a Special Permit to exceed Gross Floor Area in the Residential District under Zoning Bylaw Sections 50.2 and 30.8 with the construction of an ADU on the property.

Chair Lucy recognized Ms. Alessi who introduced herself and Ms. Peters. Ms. Alessi then presented the proposed project to the Members. Ms. Alessi also confirmed with Chair Lucy that an Abutter to the property had submitted a letter of support for the project and Chair Lucy stated that the letter was included in the Members' packet.

Once the presentation was completed, Town Planner/Land Use Counsel Carboni commented on the calculations determined by the Building Commissioner and opined that the proposed ADU would be allowed as by right.

Members briefly discussed the adherence to the Bylaw and that it was good use of the land for an ADU.

Chair Lucy asked if any members of the public wished to comment and there were none.

Chair Lucy announced that seated Members who would vote on this matter would be Chair Lucy, Vice Chair Shedd, Member Hultin, Member Medoff, and Member Crocker.

Vice Chair Shedd made a motion to grant a Special Permit to exceed Gross Floor Area in the Residential District under Zoning Bylaw Sections 50.2 and 30.8 with the construction of an ADU on the property.

Member Hultin seconded the motion.

ROLL CALL VOTE:**Member Hultin – Aye****Member Medoff - Aye****Vice Chair Shedd – Aye****Member Crocker - Aye****Chair Lucy - Aye****So voted, 5-0-0, motion carries.****Board Action/Review**

2023-008/ZBA - Charles Silva for property located at 3 79 Shore Road (Atlas Map 10, Parcel 10). Applicant seeks a Special Permit to construct a two-story dwelling replacing a 1-½ story dwelling on nonconforming lot (lot area and frontage; front setback, side setback, and two dwellings on lot) in the Beach Point Limited Business District.

Chair Lucy announced that this action is the reconsideration of the ZBA's vote last month to deny a Special Permit in this matter. Chair Lucy also noted that the Applicant was not given the opportunity to request a continuance or withdraw the application without prejudice; however, the Applicant has asked for the Members for reconsideration as the Applicant now has to wait 2 years to resubmit an application for this project. Town Planner/Land Use Counsel Carboni said that the ZBA can reopen the public hearing as there is case law that supported similar actions.

Chair Lucy recognized Mr. Silva who said that he is working on new plans.

Before the vote on this matter, Chair Lucy announced that this would require a majority vote by the Members.

Chair Lucy made a motion to allow Mr. Silva back before the ZBA, to reopen the case and continue to hear the case for this property.

Member Medoff seconded the motion.

ROLL CALL VOTE:**Member Hultin – Aye****Member Medoff - Aye****Vice Chair Shedd – Aye****Member Crocker - Aye****Member McKinnon - Aye****Chair Lucy - Aye****So voted, 6-0-0, motion carries.****Appointment of ZBA Representative to the Housing Sub-Committee**

Members discussed this topic with input from Town Planner/Land Use Counsel Carboni, Member Medoff, and Member McKinnon.

Chair Lucy made a motion to appoint Nancy Medoff to the Housing Sub-Committee.

Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:**Member Hultin – Aye**

Member Medoff - Aye
Vice Chair Shedd – Aye
Member Crocker - Aye
Member McKinnon - Aye
Chair Lucy - Aye
So voted, 6-0-0, motion carries.

Discussion and Vote on Proposed 2024 ZBA Meeting Schedule

Chair Lucy led a review of the 2024 ZBA Meeting Schedule.

Chair Lucy made a motion to approve the 2024 ZBA Meeting Schedule.
Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye
Member Medoff - Aye
Vice Chair Shedd – Aye
Member Crocker - Aye
Member McKinnon - Aye
Chair Lucy - Aye
So voted, 6-0-0, motion carries.

Chair Lucy reminded the Members that if they have suggested findings in the matter of **2023-006/ZBA Robert J. Martin II and 100 Route 6 LLC** to send them directly to Town Planner/Land Use Counsel Carboni and not share those suggested findings to anyone else.

Vice Chair Shedd made a motion to adjourn at 8:40 pm.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Hultin – Aye
Member Medoff - Aye
Vice Chair Shedd – Aye
Member Crocker - Aye
Member McKinnon – Aye
Chair Lucy - Aye
So voted, 6-0, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff