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**ZONING BOARD OF APPEALS  
TRURO, MASSACHUSETTS  
MINUTES  
APRIL 24, 2017  
7 PM - TRURO TOWN HALL  
24 TOWN HALL ROAD, TRURO**

QUORUM PRESENT: B. Perkel (Chmn); F. Todd (V. Chair); A. Hultin (Clerk); J. Thornley; J. Dundas, N. Brown, (Alt.) (Vacancy: 'Alt').

Also present, Planner Ruffer, Planner Ridley, Town Counsel Silverstein. (S. Kelly, Recording Sec.)

Meeting convened at 7:02 PM by Chairman Perkel.

**Continuation – 2017-003/ZBA – Neal Walker**, by agt/rep Keith Hutchings, Old Harbor Homes, for property located at 40 Parker Dr., (Atlas Sheet 42, Parcel 40)(Reg. of Deeds title ref: Bk. 27093, Pg. 331). Applicant is seeking a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref. to Sec. 10.4, 50.1.A. of the Zoning Bylaw, in order to construct a 44'x24' attached garage, as per plans filed, continued from March 27, 2017. Mr. Walker was present and explained the plans for the project. Mr. Perkel asked about the covered 'arcade' and if it would be attached to the current structure and garage; Mr. Hutchings explained this was attached to the "upside-down" house; this connection will go to the half bath on the second floor of the garage. He noted the rest of the garage is open and referred to the elevation of the interior on the next-to-last page.

Member Todd asked about an association and whether there was any covenant; response was there is a covenant and specifies attached 2-car garages; it was also explained the bathroom is needed for the second level of the existing house, which does not have one; furthermore, it was noted there would be room in the garage for storage space, and for a boat, etc. Other members did not have further questions or issues with the request and the following Motion was made:

**Motion (Todd, 2<sup>nd</sup> Thornley):** Move to grant a Special Permit to Neal Walker for property located at 40 Parker Drive, (Atlas Sheet 42, Parcel 40)(2017-003/ZBA)(Reg. of Deeds Title Ref: Bk. 27093, Pg. 331), in order to construct a 44'x24' attached garage, (w/ref. to Secs. 10.4 and 50.1.A. of the Truro Zoning Bylaw) as per plans filed, with reference to Slade Associates Site Plan of Land in Truro, with a revised date of Feb. 2, 2017, and Old Harbor Homes Floor Plans and Elevations, [6 pgs.] for Neal Walker, dated April 11, 2017. The ZBA Finds: the location is in compliance with the front and sideline setback requirements for the district; furthermore, said Special Permit is not substantially more detrimental to the neighborhood, and is in keeping with the intent of the Truro Zoning Bylaw.

Voted in Favor: Perkel, Todd, Hultin, Dundas, Thornley; Voted Against: None; Abstained: Brown. Motion Carries: 5-0-1.

**2017-004/ZBA – Sheila Collins and David Vargo**, by agt/arch Mark Hammer, for property located at 23 Great Hills Rd., (Atlas Sheet 53, Parcel 4)(Reg. of Deeds title ref: Bk. 28130, Pg. 346). Applicants are seeking a Variance w/ref. to Secs. 10.4., 50.1., and 30.7. of the Truro Zoning Bylaw (Street Definition, Regulation Table for Min. Lot Frontage, and Pre-existing, non-conforming structures), for an alteration w/new decks and stairs, as per plans filed; (Mr. Hultin recused himself from hearing this petition.)

Atty. Lester Jr. Murphy, Jr. was present to explain the petition. He said the applicants had originally applied for a Variance; however the plan had been re-designed recently and the applicants would like to ask for a Special Permit to allow for renovations, decks, shower enclosure, steps and also interior space work which was not before the ZBA. He explained Great Hills Rd. doesn't meet the street definition present in the subdivision regulations; therefore it is a lawful pre-existing non-conforming structure. He continued, any footprint increase is within the setback; none of the decks or screened-in porch areas encroach into the setback area. In response to Mr. Thornley's question about the right-of-way, it was explained this does not divide the lot. Planner Ruffer noted the decision would be the grant of a Special Permit rather than a Variance. Atty. Murphy also noted he had provided proposed Findings of Fact. After further review, the following Motion was made:

**Motion (Thornley, 2<sup>nd</sup> Todd):** Move in the matter of 2017-004/ZBA to grant a Special Permit to Sheila Collins and David Vargo, (by agt/arch Mark Hammer) for property located at 23 Great Hills Rd., (Atlas Sheet 53, Parcel 4) (2017-004/ZBA)(Reg. of Deeds title ref: Bk. 28130, Pg. 346) w/ref. to Sec. 30.7. of the Truro Zoning Bylaw for an

alteration with new decks and stairs, with the Findings: (1) property consists of a single-family residence constructed in approximately 1977 prior to the adoption of the present definition of street frontage in the Zoning By-Laws and constitutes a lawful pre-existing non-conforming structure; (2) applicant's proposal for renovations and alterations to the structure consist of the addition of a screened-in porch on the west side, expanded decks on the east and west sides and a new deck and shower enclosure on the north side as well as renovations to the existing structure all of which are located outside of all front, side and rear setback areas; (3) The proposed additions and renovations will not be substantially more detrimental to the neighborhood than the existing non-conforming structure and the structure as altered can exist in harmony with both the public good and the general purpose and intent of the Zoning Bylaw.

Voted in Favor: Todd; Perkel; Thornley, Dundas, Brown. Voted Against: None. (Hultin had recused himself).

Motion Carries 5/0 Unanimous vote.

**2017-005/ZBA – Town of Truro, Rae Ann Palmer, Town Mgr.,** by agt Jarrod Cabral, DPW Dir., for property located at 36 Shore Rd., (Atlas Sheet 36, Parcel 130), (title ref: Bk. 1073, Pg. 221). Applicant is seeking a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref. to Secs. 10.4, 50.1.A. and 30.7.A. of the Zoning Bylaw for construction of a concrete sustaining wall for a septic system leach field, as per plans filed. Health/Conservation Agent Pajoran was present to explain the petition. She said the site contains a building used for a beach office; the site contains a wetland and the work will entail abandonment of the existing cesspool with the replacement of a new septic system, ref. to J.M. O'Reilly & Associates, Inc. Design plans. She continued, there are no plans to expand the existing office; the work was for meeting Title 5 requirements. The proposal has been approved by the Conservation Commission, Board of Health and Planning Board, and the sustaining wall is within five (5) feet of the property line. Members reviewed the plans and commented; it was noted this would be an improvement at the site. Since there were no further questions, the following Motion was made:

**Motion (Thornley, 2<sup>nd</sup> Todd):** Move in the matter of 2017-005/ZBA to grant a Special Permit to the Town of Truro, for property located at 36 Shore Rd., (Atlas Sheet 36, Parcel 130), (title ref: Bk. 1073, Pg. 221, to construct a concrete sustaining wall for a septic system leach field ( w/ref. to Secs. 10.4, 50.1.A. and 30.7.A. of the Zoning Bylaw) and with reference to plan (Site & Sewage Disposal System Design) by J.M. O'Reilly & Associates, Inc., dated 3/3/17. The ZBA Finds said construction is an improvement over the existing system; the proposed wall is at the maximum distance from the wetland; the Grant of said Special Permit is not substantially more detrimental to the neighborhood, and is in harmony with the general purpose and intent of the Truro Zoning Bylaw.

Voted in favor: Dundas, Brown, Thornley, Perkel, Todd (Hultin had recused himself). Voted Against: None. Motion Carries: 5/Yes; 0/No.

**2017-006/ZBA – Anne Labouisse Peretz** (applicant), by atty/rep Benjamin E. Zehnder, (owners William Burdick, Richard Vanison, Trs., Dune House Nominee Trust), for property at 112 N. Pamet Rd., (Atlas Sheet 48, Parcel 1). (Certif. of Title No. 208468, Land Ct. Lot #7, Plan #15097-H.) Applicant is seeking a Variance (w/ref. to Sec. 50.1.A) & Special Permit (w/ref. to Sec. 30.3[B](8), and 30.7. & 50.1(b), and 3) of the Zoning Bylaw, to relocate and reconstruct an existing residential dwelling within the sideyard setback, w/proposed dwelling exceeding allowed height, as per plans filed.

Atty. Zehnder, on behalf of applicant Peretz, was present to explain the application. He cited site plan C.2.1.1 by Coastal Engineering, as well as elevations and floor plans A1, A2 by Dan Costa; the applicants were requesting a Variance and Special Permit due to the erosion threat at the site to remove the house and build a smaller house which would be 180 ft. back from the coastal bank; he noted this was an unusual lot configuration; the existing house was approx.. 3,167 sf and a 2,655 sf single-family residence is proposed, thus there is a reduction of lot coverage. A height of 33.1 ft. is proposed and only one floor of the home will be visible. He explained the variance request: if they were to move the house back, the house has a ridge, and if they relocated it, they would need to drop it in a hole where the septic system would be installed. Zoning relief was needed because the structure would be within 6 ft. from the sideline. He continued, the location of the proposed house will be away from the higher house; the new house will actually be 10 feet less than what is currently shown. The structure would be 2,665 -- less than the limitation imposed in the Seashore, and the scale of the size of the proposed house is less. Atty. Zehnder concluded they were requesting a sideline variance and a special permit regarding the height.

Members spoke about the proposal; Mr. Brown voiced concerns about the height, although he concurred the topography of the lot is difficult; he did not have an issue with the location of the house; he was concerned about the height and in keeping the minimum roof and ridge height; he noted the average height is 33.4, and he felt it was possible to drop the height of the home; he liked the design of the house, but he felt height was a problem.

Coastal Engineering's representative spoke and explained to the reach the height of 33.4 ft. the topography on all four sides was considered, and he provided a profile of the property.

Mr. Todd voiced concerns about the visibility from the hill and said the proposed home will be put in a more prominent location; he added the height affects the setback.

Member Hultin spoke of consideration of conservation commission "zone" and voiced concerns about the choice of location as well, and the variance for setback not for height; he cited Sec. 60.1 of the Zoning bylaw and noted the bylaw allows height limitation relief by Special Permit. He continued, the zoning bylaw is there for a reason and asked how the criteria for granting a Variance are met. The application was requesting relief from height restriction and there was a question of whether the height could be reduced.

Mr. Perkel added, the height is difficult to deal with if there is no need for relief from height requirements at this time.

Mrs. Peretz explained if the living room had to be lower, they would immediately lose the view across the dune.

Mr. Perkel spoke of a regrade of the property and noted the finished elevation needs to be less than 30 ft. above grade. After further review, ZBA members they would like to revisit the design of the structure and there would be a continuation to May 22, 2017.

A Motion was made and second to continue the petition to May 22, 2017 at 7 PM at Truro Town Hall.

**2017-007/ZBA – White Sands Beach Club, Maria Kuliopulos**, by agt/atty Edward T. Patten, for property located at 706 Shore Rd., (Atlas Sheet 1, Parcel 5)(Reg. of Deeds title ref: Bk. 415, Pgs. 57-62.) Applicant is seeking a Special Permit w/ref. to Sec. 30.7.A. of the Zoning Bylaw to reconstruct a 17 unit motel building on a pre-existing, non-conforming site (which will result in 47 total units at the motel site), as per plans filed.

Atty. Patten was present with the applicant to explain the petition. He noted the property had been owned by the Kuliopulos family for 30 years and 2 ½ years ago there was a fire at the motel. Reconstruction of the building impacted by the fire had zoning protection for two years and since there had been no action taken within those two years, they had lost said protection. There had been an application to the Planning Board for Site Plan Review. The Planning Board action was still pending and the issue had been raised of the outstanding zoning issues. He continued, the newly-constructed building will conform to bylaw requirements; several zoning issues had been raised at the Planning Board hearing; their final decision was pending the ZBA decision. They were asking for a Special Permit with reference to Sec. 30.7.A. of the Zoning Bylaw and a reduction from 50 to 47 motel units. He noted the only exterior activity will be that of the construction of the motel building he spoke of the building commissioner's opinion on zoning issues. He referenced the Coastal Engineering plan C1.2.1 which showed the existing site plan; this combined with the new construction will result in 47 units which is below the total maximum number of units allowed; nothing will change at the site other than the erection of the new conforming building which will not be more detrimental and will be in harmony with the intent of the Truro Zoning Bylaw. In summary, Atty. Patten said everything being built is conforming to setback requirements. It was noted this was a pre-existing non-conforming structure and the issue was raised as to whether this was a new "non-conformity." Atty. Patten noted the emphasis is on zoning compliance with the replacement of the burnt-out structure.

ZBA member Todd noted they were replacing a single-story building with two stories and Mr. Hultin noted sideline setbacks are important everywhere on a site. It was also noted any non-conformity on the site renders the whole site non-conforming and general concerns were voiced with the change from 1 to 2 stories. Chairman Perkel noted there had to be a Finding the proposal is in harmony with the intent of the bylaw and not more detrimental to the neighborhood; he was concerned with the detrimental to the neighborhood aspect. He continued, on the Provincetown side the impact of a two-story building would be significant in respect to more detrimental to the neighborhood. He also asked about air conditioning for the new building. Mrs. Kuliopulos said there would be air conditioning units for each room. Members reviewed the plans.



Atty. Reid, Counsel for abutters Powers, spoke; he noted there was no debate that a Special Permit is needed; he reiterated, after the fire in 2014 they had two years to reconstruct by right; the two years passed in Oct. 2016 and therefore they lost their grandfathered status. The applicants asked for an extension and the Board of Selectmen did not grant an extension. Currently there are 35 units – 33 units and a seasonal apartment above a garage which is for seasonal rental use; there is an increase from 35 to 47 units, they were not asking to reduce the number of units rather there would be an increase; there would be a consolidation which would result in doubling the units by reducing the 10 existing units to 5 units; he said the building and use are not conforming and the parking plan is inadequate.

Motel unit definition was discussed; the bylaw definition said, not more than one room exclusive of bathroom. Also, in reference to floor plans, they did not appear to show one-room motel rooms. Members reviewed the plans and noted the Board of Health defines bedrooms for their septic regulations; however these are not under the motel room definition in the bylaw; the BOH regulations reference room definitions; units are not bedrooms, but are rooms. All of those units combined from ten units to five units will have two rooms; also going to a second story will increase the number of rooms; the finding of: “... not more detrimental ... and in keeping with the intent of the bylaw,” was mentioned as well. Truro’s Local Comprehensive Plan was mentioned and it was noted this proposal was not consistent with said Local Comprehensive Plan, including mention of lack of “high-rise” structures in Truro. These buildings are only ten feet away from the property line and concerns were voiced over the air conditioning units in each unit which would be close to the property line.

Members asked about Site Plan Review by the Planning Board; it was explained, Planning Board action on Site Plan Review was pending ZBA action.

Other comments by members included the fact that all windows overlook the neighbors site; furthermore, it was explained the size of the wall opening defines a one or two-room designation.

Jason Kuliopulos spoke about the project; he said the two stories meet the town’s requirements; there has also been a hardship issue because they have been unable to open the motel. After further discussion members concurred they would like to confer, and would like feedback from both Town Counsel and the Building Commissioner; it seemed as if no one was supportive of the petition and it was noted 5 letters had been received from abutters in opposition. Mr. Perkel asked if anyone was present to speak and Ms. Sheehan of Beach Point spoke; she could understand the replacement of the structure that was lost in the fire; however she would be supportive if the structure were 20 feet from the proposed structure; furthermore, the two-story structure would detract from their cottage and she would like to see a replacement of a barrier for their protection. Another resident spoke and voiced concerns over the two-story aspect of the proposal; he agreed they should be able to develop, but not two stories, and spoke of the loss of privacy at their property, and potential noise from the balconies. Blue Sea owner Deb Sverid spoke about the property and said there seemed to be a lack of concern about the property and said she was concerned about an unfinished building on the property which was an eyesore, and she asked that they clean up what exists on the site already. Another abutter agreed about the state of the site.

Chairman Perkel explained there is no view easement in Massachusetts and this was not a zoning issue; further concerns were raised about the second floor and privacy of abutters. After further discussion, a Motion was made by Hultin (2nd by Thornley) to continue to May 22, 2017 at 7 PM at Town Hall.; unanimous to Continue.

Minutes approved: Feb. 27, March 20, March 27, 2017.

Next regular meeting: May 22, 2017.

There was no other business to discuss. Meeting adjourned at 9:30 PM

Respectfully submitted,

  
Susan Kelly