

**TOWN OF TRURO  
ZONING BOARD OF APPEALS  
Meeting Minutes  
August 27, 2018, 5:30 pm  
Truro Town Hall**

**Quorum Present:** B. Perkel (Chair), A. Hultin (Clerk), J. Dundas (Member), J. Thornley (Member), F. Todd (Member), S. Areson (Alternate), C. Lucy (Alternate)

**Other Participants:** Martin Sokolov, owner of 3 Crestview Circle; Joan Sokolov, wife of Martin Sokolov; Joan Holt, resident of 3 Daisy Lane; Atty Nathaniel Stevens, McGregor & Legere; Mark Hammer, architect; Brad Malo, Principal Coastal Engineering; Joanne Barkin, resident of Stevens Way; Resident of 19 Stevens Way; Atty Jonathan Silverstein, Town Counsel; Atty Benjamin Zehnder, representing Timsneck LLC; Atty Reid; Jack Riemer, Truro resident; Rich Sullivan, resident of Sandpiper Ave; Zachary Ment, resident of 4 Bridge Ln; Atty Zehnder's client; Atty Sarah Turano-Flores; Atty Justin Perrotta; Karen Tosh, resident of Cooper Rd.; John Friedman, resident of 17 Stephens Way; Ellen Weiss, Truro resident

**Meeting convened at 5:31 pm by Chair Perkel.**

**2018-010/ZBA – 3 Crestview Circle LLC, for property located at 3 Crestview Circle (Atlas Sheet 42, Parcel 22, title reference: Book 31104, Page 283). Applicant seeks a Special Permit w/ref to Section 30.7A of the Truro Zoning Bylaw for an addition, including a screened-in porch, to a pre-existing, non-conforming structure.**

Martin Sokolov, owner of 3 Crestview Circle and his wife Joan Sokolov come forward. Mr. Sokolov states that they wish to add a 1-story addition, a fourth bedroom, and a screen porch. He states that he understands the issue lies with the roadway and he has no further intentions regarding the roadway, so he is happy to answer any questions.

Chair Perkel asks Mr. Sokolov to take the board through the drawings and he agrees. He takes the board through the plans.

Alternate Lucy asks if the septic system is big enough for a fourth bedroom. Mr. Sokolov says that it is.

Mr. Sokolov distributes a letter from the Tru Haven Association regarding the changes to his property.

**Clerk Hultin moves in the matter of 2018-010/ZBA – 3 Crestview Circle LLC to grant a special permit for property located at 3 Crestview Circle for the addition of a bedroom, bathroom, and screened in porch to a pre-existing, non-conforming structure as per plans filed with this Board. Member Thornley seconds. So voted, 5-0-2, motion carries.**

**(Alternates Areson and Lucy abstained).**

Joan Holt of 3 Daisy Lane comes forward and asks if the ZBA has objective written criteria for deciding that a Special Permit or a variance on a non-conforming property or road is or is not in the public interest, and whether or not granting it would be a detriment to the effected neighborhood. If the Board does not have an objective criteria for granting exceptions to requirements for the Zoning Bylaws, and for the purpose of protecting the town from the kind of litigation that arises from the Board's failure to enforce the Bylaw, she suggests that the ZBA refrain from approving any more Special Permits or variances on properties that are non-conforming where they are asking to increase the non-conformity, that the Board in effect announce a moratorium until they have adopted specific, objective criteria for deciding that an increase in a pre-existing, non-conformity is in the public interest and will not be detrimental to the neighboring community. If doing this might run out the clock for any applicant currently before the Board, she suggests that they allow and encourage applicants to withdraw without prejudice, or, if they choose not to withdraw until the Board has objective standards, that the Board deny the application.

**Continuation – 2018-008/ZBA – Jennifer and John Chisholm, for property located at 417 Shore Road (Atlas Sheet 10, Parcel 2, title reference: Book 8078, Page 032). Applicants seek a Special Permit w/ref to Section 50.1 of the Truro Zoning Bylaw for the addition of a second floor to a pre-existing, non-conforming structure.**

Alternate Lucy recuses himself from the issue.

Atty Nathaniel Stevens of McGregor & Legere, representing Jennifer and John Chisholm, architect Mark Hammer, and Brad Malo of Coastal Engineering come forward. Mr. Stevens says that two alternatives to the project presented at the previous meeting have been submitted to the Board and Chair Perkel asks Mr. Stevens to walk them through the plans.

Mr. Stevens begins with plan C, the most preferred by the client, and the Board is told the difference between plan C and B is that plan B does not have a small deck above the garage doors.

Member Todd asks about the setback on the west side of the structure and is told by Mr. Stevens and Mr. Hammer that it is conforming.

Member Thornley asks why there are two sets of stairs, one inside and one outside. Mr. Hammer explains that a second method of egress was advised because of the ground floor being a garage. There were concerns it could be filled with vehicles and furniture and not as clear an exit from the top floor.

Chair Perkel asks if anyone wants to come forward in support or opposition to the project. No one comes forward at this time.

Joanne Barkin, resident of Stevens Way in Truro comes forward and says that she feels it is difficult for a member of the public to understand the context of this case or why it is before the Board. Member Todd comments that for those who are interested in the information of the meetings, all of the materials on them are available for the public at Truro Town Hall.

Member Dundas asks Chair Perkel if the Board needs to prioritize a plan to vote on for the applicant.

**Member Todd makes a motion to approve the plans for the structure Scheme C under the condition that the septic drawing be advised to match Scheme C. Member Dundas seconds. So voted, 5-0-2, motion carries. (Alternates Areson and Lucy abstained).**

Resident of 19 Stephens Way (name given was unclear) comes forward. She wants to confirm that Alternate Lucy sat away from the rest of the Board because he recused himself. The Board tells her that is correct. Ms. (Unknown) would prefer if in the future it was announced more clearly for attendees. Chair Perkel responds that he should have.

**Chair Perkel calls a 5-minute recess to meet with Town Counsel who has just arrived, announces the Board will reconvene at 6:00 pm.**

**Chair Perkel calls the meeting back into session.**

**Continuation – 2018-002/ZBA – Timsneck LLC, by Atty Benjamin Zehnder, for property located at 10 Thornley Meadow Road (Atlas Sheet 53, Parcel 87, title reference: Book 30529, Page 134). Applicants are seeking a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref to Sections 10.4 and 30.7B of the Truro Zoning Bylaw for additions to a pre-existing, non-conforming single family dwelling.**

Chair Perkel starts by saying that the Board will do things procedurally different for this case as a question has been raised by the opposing counsel that, if answered in their favor, would prevent the Board from even getting to the plans at hand and the application will be denied. Mr. Perkel states that he would have the Town Counsel publicly deliver an opinion on the legality of the additions first.

Atty Jonathan Silverstein, Town Counsel comes forward. He was asked by the Chair to identify whether the division of this lot from an adjoining and previously commonly owned lot created a new zoning non-conformity such that the structure on the lot would no longer be considered a pre-existing, non-conforming structure for which a Special Permit could be issued. Mr. Silverstein speaks of the courts findings regarding when zoning violations come into play. It was his initial understanding that the only zoning non-conformity was the qualification of the road. However due to the way courts see when zoning non-conformities are actually recognized on properties that are divided, the question was raised if new zoning issues became present when the

property was divided about a decade ago.

Atty Silverstein says that if a new zoning non-conformity was created upon the division of the lot within the last 10 years, the existing structure would no longer be considered grandfathered. If so, the Board would not have the authority to issue a Special Permit. If not, the Board would have authority. It is Mr. Silverstein's understanding that a new zoning non-conformity was created involving frontage being decreased to less than 150 ft. on either Thornley Meadow Rd. or Button Hill Rd. He believes however that Mr. Zehnder will argue that Button Hill Rd. doesn't really exist and is an extension of Thornley Meadow Rd. Mr. Silverstein says the Board must consider if they look at the paper layout of a road that has never really been constructed or the historically recognized definition of the street.

Chair Perkel says that he has been concerned throughout this matter that the Board is making some factual decisions that they perhaps shouldn't be.

Atty Benjamin Zehnder, representing the Applicant, comes forward. He says in regards to Chair Perkel's prior comments that unfortunately to move forward to the building commissioner, they have to let the Board make these decisions.

Atty Zehnder hands out copies to the board of comments on the plans to help give a better understanding of the proposed project as it is discussed. He discusses the nature of the road and hopes the Board will find the plans conform given the road's nature.

Atty Reid comes forward and makes the case that the frontage must be calculated using the paper plan. He says that the issue before the Board tonight does not have to do with granting a variance to the frontage, even though Mr. Zehnder makes a good case that such a thing could be possible.

Chair Perkel asks Mr. Silverstein what he thinks the interpretation should be for this matter. He says the legal interpretation is somewhat clearer in Mr. Reid's case but that it could be seen either way.

Clerk Hultin asks about the history of laying out Button Hill Road. Atty Zehnder explains.

Clerk Hultin asks if the lot in question is considered a corner lot. Atty Reid would consider it to be, Atty Zehnder would not. The Board discusses with Mr. Zehnder the layout of the neighborhood and how the applicant is counting frontage.

Atty Reid speaks to how the Board must go off of the paper plans for determining frontage.

Chair Perkel asks Atty Zehnder to draw a simple approximation of where his 150 ft of frontage in question lies on a paper plan. The Board examines.

The Board discusses with the three attorneys the nature of Thornley Meadow and Button Hill

and the problems it poses.

Chair Perkel says that he wouldn't like to ignore lot lines and roads as drawn even if the physical space on the ground may be different. He would say that there is no frontage and the case would make it to Land Court. Clerk Hultin agrees that the plans are really all the Board has to work with.

Chair Perkel and Atty Silverstein discuss how the Board would go forward with a motion.

Chair Perkel opens the opportunity for public comment on the technicality of the issue.

Jack Riemer, resident of Truro comes forward. He says the Board was not made aware of the fact that there are two covenants in Barnstable regarding Thornley Meadow Rd and Button Hill Rd.

Joanne Barkin comes forward. She believes that it is the best course of action for the Board to strictly enforce the Zoning Bylaw and vote no.

Rich Sullivan of 2 Sandpiper Ave comes forward. He reiterates a point brought up by Town Counsel that what's most important is what's really there. He would argue in favor of granting the applicant a positive ruling.

Zachary Ment of 4 Bridge Ln. comes forward. He believes the arguments of the opposers are a strategy to delay and come up with new issues, not to do what is best for the Town.

Atty Reid comes forward to argue that the most important aspect is the technical frontage, not what is actually on the ground.

Atty Zehnder and his client comes forward and asks for the Board to consider a continuation.

Chair Perkel closes the evidentiary portion of the case.

Chair Perkel believes if the Board does not deny the Special Permit on the grounds of non-conformity, the case will rise again further down the road with all of the other issues not currently being decided tonight. Denying the application gives the applicant time to apply for a variance, which they may be entitled to. Clerk Hultin believes however that it would be strange to not offer the applicant a continuance if they have come this far and it may help them in some way. Members Dundas, Todd and Alternate Areson agree with Clerk Hultin.

**Clerk Hultin makes a motion for a continuance to next month's meeting on September 24<sup>th</sup> at the applicant's request. Alternate Areson seconds. So voted, 6-0-0, motion carries. (Member Thornley was not present at this time)**

**Continuation – 2018-003/ZBA – Susan Lewis Solomont, by Atty Sarah Turano-Flores, for property located at 37 Stephens Way (Atlas Sheet 58, Parcel 1, title reference: Book 10986, Page 185). Applicant is seeking to overturn the Building Commissioner's decision to not issue a permit and is also requesting a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref to Sec. 10.2 and 50.1A of the Truro Zoning Bylaw to construct a single family dwelling.**

Clerk Hultin announces that he must recuse himself and vacates the room.

**Chair Perkel calls a 5-minute recess.**

**Chair Perkel calls the meeting back into session.**

Alternate Lucy recuses himself from the issue.

Chair Perkel asks for guidance from Town Counsel before they begin, as Atty Silverstein has been well-briefed on the issues. He speaks to the issue of the two lots being under separate ownership even though they are husband and wife. Mr. Silverstein says that it is not the Board's purview. Another, more important question before the Board is related to the original submittal of the applicant's project, involving the consideration of frontage on the lot. He says that the Board must decide if there is a pre-existing non-conformity on the lot since the applicant wishes to build a structure for the first time on it.

Atty Sarah Turano-Flores comes forward. She goes over the contentions of the applicant that the lot is fully conformant and its history. Ms. Turano-Flores cites law that states the lot is grandfathered and that her client has the right of way to build.

Atty Silverstein disagrees that the lot is built to conformity. His view is that in looking at the definition of the street it's hard to differentiate the fact that to get to the traveled way you have to travel over a length of road that encourages an interpretation of the Zoning Bylaw not in the applicant's favor. Mr. Silverstein doesn't believe the Board has to get into exactly what the Building Commissioner wrote, it should come down to if the Board considers the construction of the original lot to be conforming.

Chair Perkel is uncomfortable with the road as it was defined and currently sees that there is no road by the property in question.

Atty Justin Perrotta comes forward. He reiterates that frontage has to exist on the ground and argues that there is none on this lot. Mr. Perrotta says that in the single-family exemption raised there is also a requirement of frontage that does not currently exist.

Chair Perkel says that if the Building Commissioner at the time stated the lot was buildable, that doesn't mean that they were correct.

Member Dundas asks Atty Turano-Flores if the Town has always viewed the lot in question as a buildable lot and taxed it as such, she says that it has.

Chair Perkel and Atty Turano-Flores discuss the possibility of the road being built out to specifications that would allow frontage and Mr. Perkel does not think it would help the applicant.

Town Counsel says that the Board could act separately, as in: first take public comment, then vote on the appeal, public comment, Special Permit, public comment, variance. It could also be done all at once.

Atty Turano-Flores says that they are skipping the Special Permit.

The Board, Atty Turano-Flores and Town Counsel all discuss the complexities of the lot being lawful or not.

Chair Perkel begins the public comment period by asking if anyone in favor of the project wants to come forward.

Jack Riemer comes forward. Citing Planning Board rescinding of previous subdivision's statuses due to a comprehensive overhaul of language in Town laws, he doesn't believe the Board should give much weight to lots that have never been built on.

Karen Tosh, resident of Cooper Rd comes forward and says that the previous owner of the property tried in vain to build on the lot before Mrs. Solomont acquired it and the lot had been declared unbuildable. Member Thornley asks when that was declared and Ms. Tosh does not know.

John Friedman of 17 Stephens Way comes forward with a statement by Atty Shapiro representing clients against the construction, which he reads. Chair Perkel comments that he feels claims of safety issues due to the roadway becoming narrower are disingenuous but that other points have substance.

Ellen Weiss, resident of Truro comes forward asking if it is correct that a written statement of a reason for recusal by a member of the board must be given to the Chair and if that has been done. Chair Perkel says that they will change procedure if necessary upon looking into it.

Joan Holt comes forward and discusses the issue of taxation on a lot determined buildable that is later found to be not buildable. She says that after becoming stuck in soft sand the Building Commissioner rescinded his previous statement in a letter to the Planning Board that the road was okay. She does not believe that the property in question is connected to the road.

Atty Turano-Flores comments on the variance permit granting. She points to the history of the lot and the perceived lack of frontage by the Board as the reason for a variance. She believes the property doesn't require the traditional frontage because it meets soil and topography conditions. Given the history of the property, Ms. Turano-Flores also sees it reasonable that upon purchase of the property, there was no reason for Mrs. Solomont to expect the lot to be deemed unbuildable. Ms. Turano-Flores shows the Board a paper plan of the area in question. She points out to the board addended meeting minutes on her most recent brief that support her client's points.

The Board, Town Counsel, and Atty Turano-Flores discuss what the variance does.

Atty Perrotta comes forward and comments on the variance. He says that granting a variance in this case is essentially granting one to all of Stephens Way.

**Chair Perkel calls a 10-minute recess.**

**Chair Perkel calls the meeting back into session at 9:05 pm.**

Chair Perkel says that he is open to the idea of the property being buildable and perhaps the opportunity for Atty Turano-Flores to gather more factual evidence for her client's case would be welcome.

Atty Turano-Flores and Chair Perkel discuss interpretation of the area the property is in.

The Board discusses possibility of a continuation.

**Member Todd makes a motion to continue to September 24, 2018. Member Dundas seconds. So voted, 6-0-1 (Member Lucy recused himself), motion carries.**

**Chair Perkel makes a motion to adjourn. So voted, 6-0-0, motion carries.**

Respectfully submitted,



Paxton Green

