

**TRURO ZONING BOARD OF APPEALS
MEETING MINUTES
October 29, 2018
Truro Town Hall**

PLANNING BOARD MEMBERS PRESENT: Chair, Bertram Perkel, Christopher Lucy, John Dundas, Art Hultin, John Thornley, Susan Areson

PLANNING BOARD MEMBERS ABSENT: Fred Todd

OTHER PARTICIPANTS: Interim Town Planner, Jessica Bardi, John Bloom, Nancy Bloom, Naomi Rorro, Atty. Benjamin Zehnder, Gary Ellis, David Dittachio, Annie Dittachio

Chair Perkel called the meeting to order at 5:30pm. He stated he'd just held a discussion with Town Counsel regarding the continuation of 2018-003/ZBA-Susan Lewis Solomont. The Zoning Board only has four voting members at the meeting (one voting member is ill and some members will be recusing themselves). The option has been offered to continue this item to the next meeting.

Mr. Dundas made a motion in the matter of 2018-003/ZBA Susan Lewis Solomont to continue to the November 26, 2018 meeting.

Mr. Thornley seconded the motion.

So voted; 4-0-2 (Chris Lucy and Art Hultin abstained), motion carries.

Public Comment Period

No public comment was made.

2018-009/ZBA – John and Nancy Bloom, for property located at 19 South Highland Road (Atlas Sheet 40, Parcel 23, title reference: Book 30995, Page 084). Applicants seek a Special Permit w/ref to Sections 30.7 and 50.1A of the Truro Zoning Bylaw for the construction of a two-car garage and second-floor work studio.

John and Nancy Bloom approached the Board. Mr. Bloom explained that they would like to construct a two-car garage with a work space on the second floor. There will be a bathroom on the second floor as well. There was a garage at this location previously in 1969. Mrs. Bloom added that the house had been condemned back in 2012 by the Town. That is when the Bloom's purchased the property and improved it.

Mr. Hultin thinks this qualifies as a habitable studio, not a work studio. He also does not see how that would substantially change the way the ZBA would view it. Mr. Hultin explained that the bylaw for a work studio does not allow a shower in the bathroom.

Chair Perkel would accept an amendment to the permit to change the second-floor description from a work-studio to a habitable studio.

Ms. Areson asked if any abutters had voiced concern. Interim Planner Bardi stated that no comments were received.

Naomi Rorro approached the Board, she is an abutter. She did receive a notification in the mail regarding a 2-car garage with a studio above. Ms. Rorro is glad to see people in the neighborhood who are taking care of their property. She feels the Bloom's have enhanced the neighborhood. Mr. Rorro does not have any problem with what the Bloom's are proposing to build.

Mr. Hultin made a motion on 2018-009/ZBA-John and Nancy Bloom for property located at 19 South Highland Road (Atlas Sheet 40, Parcel 23, title reference: Book 30995, Page 084) to approve a Special Permit for the construction of a 2-car garage and a second floor habitable studio as per plans filed with the Zoning Board of Appeals pursuant to Section 30.7 of the Truro Zoning Bylaw, with the findings of fact that the addition of the proposed garage and second floor habitable studio on the lot will not be substantially more detrimental to the neighborhood than the existing non-confirming structure, does not change the nature or use of the property and will exist in harmony with the general good, purpose, and intent of this bylaw.

Ms. Areson seconded the motion.

So Voted; 6-0-0, motion carries.

2018-013/ZBA – Kenneth Shapiro, for property located at 405 Shore Road (Atlas Sheet 10, Parcel 5, title reference: Book 25631, Page 201). Applicant seeks a Special Permit w/ref to Section 30.7 of the Truro Zoning Bylaw for the alteration of a pre-existing, non-conforming garage by replacing the existing structure with a new dwelling and garage structure.

Atty. Benjamin Zehnder and Gary Ellis (designer of the project) approached the Board. Atty. Zehnder explained that this is an application for 405 Shore Road to remove an existing old garage structure. Atty. Zehnder stated that the plans submitted with the application were deficient due to the lack of the engineer's stamp, also the structure and the plan didn't match in terms of the dimensions of the structure. He brought a corrected set of plans and received permission from Chair Perkel to pass those out to the Board members. Atty. Zehnder continued speaking. The lot is not a properly, pre-existing, non-conforming lot. When the garage was built on the lot, the lot itself was recombined prior to the institution of zoning, but since zoning in June 2008 the owner deeded a small part of land (approx. 4,000 sq. ft.) to the neighbor, which made the properly pre-existing, non-conforming, lot no longer pre-existing, non-conforming. Chair Perkel asked what the date of the conveyance was. Atty. Zehnder stated it was June 2008. He also stated that the effect of the conveyance on the remaining lot rendered the lot non-compliant. However, because of the passage of ten years under General Laws 40A Section 7 the structure on the lot then becomes eligible for the granting of a Special Permit for alterations of a pre-existing, non-conforming structure. The proposal is to remove the old garage structure and replace it with a single structure which has a two-car garage on the first floor, plus some storage. The property is in a flood zone which means the first level of this structure cannot be for habitation. The second floor would be a three-bedroom structure with a living and dining area. Conservation and Health approval has not been received yet. Both Boards requested that they obtain a determination from the Zoning Board of Appeals first. Atty. Zehnder stated that if the ZBA were inclined to grant a Special Permit, that they do so with a condition upon obtaining both Conservation and Health approval for the structure and the septic system as well.

Mr. Hultin doesn't understand what the ZBA will be able to approve with the words "conceptual plan" printed on them. Atty. Zehnder states those word "conceptual" can be removed. Mr. Hultin also believes it's likely that the plan will change when it goes to the Building Inspector for review. He's not sure that the second egress through a bedroom meets the building code. The height calculation needs more clarity as well and shown on the plan.

Chair Perkel doesn't see the reasoning behind building an entirely new structure and feels that it is a huge expansion of the non-conformity. He would want an opinion on whether the quoted General Laws 40A Section 7 would pertain to the existing house only or extend for the entire lot. Chair Perkel asked Atty. Zehnder for a review, which will then be sent to Town Counsel.

Atty. Zehnder wished to address the other issues brought up by Mr. Hultin. Regarding the Building Code; normally what happens is what they bring in to permit, they must build unless the Building Inspector determines it's a de minimis change in which case they would not need to come back. If it was

more than a de minimis change the Building Inspector would require they come back and amend their application. Atty. Zehnder will be happy to meet with the Building Inspector and run the plans by him to see if they meet the Building Code. He also agrees with Mr. Hultin regarding the height calculations. They need to provide the ZBA with a good mean-average ground elevation survey with a height calculation. On the question regarding how big the house is, that is up to the ZBA. Mr. Hultin interjected by stating he has serious concern with the application language where it says, "*for alteration of a pre-existing, non-conforming garage*". That harkens back to a very large case which they have been dealing with for ten years. The same language was used in that application. Atty. Zehnder explained that the statute is for the alteration of a one- or two-family residential structure, which this is. David and Annie Dittachio approached the Board. Mrs. Dittachio stated that they abut 405 Shore Road on the East side, heading toward Wellfleet. They are the neighbors who purchased that 4,000 sq. ft. lot ten years ago, and the reason why they purchased it was to keep the view and keep it open. They had no interest in building anything on that lot. Mrs. Dittachio feels the proposed structure is too big. She was under the impression that the lot they purchased and the lot which the old garage is on, were both unbuildable. But if suddenly the Shapiro lot is buildable, then they (the Dittachio's) may build something.

Mr. Dittachio stated that they are getting old and have discussed placing a small, one-story house on their lot. Mrs. Dittachio would be okay with them just replacing the garage. Mr. Dittachio, on the other hand, is in favor of the Shapiro's proposed structure, as he feels that he would then be able to move ahead with his proposed house on his property.

Atty. Zehnder came forward with a request for a continuance to the next Zoning Board of Appeals meeting, which would be November 26, 2018.

Mr. Hultin interjected to stress the importance of a clear height calculation on the plan and existing grade marked. He feels the height is very close to the maximum, which would lean him toward a determination of substantially more detrimental.

Chair Perkel made a motion to continue 2018-013/ZBA-Kenneth Shapiro to November 26, 2018.

Mr. Hultin seconded the motion.

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

Mr. Thornley made a motion to adjourn at 6:12pm.

Mr. Hultin seconded the motion.

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



Respectfully submitted, Noelle L. Scoullar

