

**TOWN OF TRURO  
ZONING BOARD OF APPEALS  
Meeting Minutes  
December 5, 2019 5:30pm  
Truro Town Hall**

**Quorum Present:** Chair Art Hultin, Vice Chair Fred Todd, John Dundas, John Thorney, Daryl Shedd, and Heidi Townsend

**Absent:** Chris Lucy

**Other participants:** Jeff Ribeiro, Town Planner, Ted Malone, Community Housing Resources Inc., Jessica Snare, Spring Hill Design, John O'Reilly, O'Reilly and Associates, KP Law Attorney Barbara Carboni and Jessica Bardi, Jarrod Cabral Department of Public Works, and Fire Chief Tim Collins. Truro Residents: Peter Herridge, Debbie Beth Parker, John Slater, Jack Reimer, and Eric Parker.

**The Public Hearing convened at 5:30pm by Chair Hultin.**

*Continuation - 2019-008 ZBA- Community Housing Resources Inc. Applicants seeks approval for a Comprehensive Permit pursuant to G.L. 40B, § 20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income person or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land.*

Chair Hultin spoke of the recent site visit to the location. Town Planner Ribeiro spoke to comments from the Health Agent and the Fire Chief. The Health Agent noted that the Bard of Health is interested in wastewater concerns. The Fire Chief requested 300-foot requirement in front of the three-family building, and a proper turning radius, a key lock box, adding an additional fire hydrant, and adding the requirement for sprinklers in all the units. The Cape Cod Commission also commented. They spoke to issue areas, one being affordable housing and transportation. They asked for a sidewalk connection to the bus stop, for water resources, and they'd look to control all nitrogen on the site. They have proposed a significant storm water system.

The Town Planner spoke to the possible impacts to fresh water, aquifer protection and private wells. He also spoke to Natural Heritage Protection (Natural Resources) and tree clearing with respect to the migration of species. Chair Hultin asked that the letters submitted be enter into the record for the project. Town Planner Ribeiro said that they can read them into the record under Public Comment.

Chair Hultin noted that the roadway must be graded at 10% grade. He asked that they have information on the catch basins on Highland Rd. The Director of Public Works, Jarrod Cabral stated that site meets the minimum standard for storm water management for a 50-year storm event. The storm water would be controlled and contained on the property. DPW Director commented where the catch basins were on Highland Rd which is a part of the DOT layout.

DPW Director Cabral noted on the Coastal Engineering plans, C1.1.1 and C1.1.2 the plan shows all of Highland Rd and noted the drainage ends up behind 2 Pond Road.

John O'Reilly, the Project Engineer, explained the site map in detail. He added that the road is at a shallow grade at the entrance and then climbs at a 10% slope. He spoke of the fill in the rear part of the site. He stated that the leaching field needs to be nine inches of finished grade minimum or as deep as three feet maximum. The design is obligated from the DOT to control all the drainage with catch basins along the Highland. There are 6 catch basins on that access road where the grade is the steepest and prevents it from getting onto Highland Rd.

He next mentioned the turning radius at the entrance the Mr. O'Reilly did a new sketched of the entrance. He noted that he needs at least a 44-foot radius on the outside of the curb. The revised entrance would be the larger entrance onto the property. He spoke to the MDOT placement of the driveway with respects to the line of sight for safety issues at both the entrance and the exit. There would be additional catch basins added to the area. ZBA Member Dundas asked about the dimensions for the revised entrance and exit. Ted Malone explained where the exit ramp from Route 6 was with respect to the revised plan for the entrance and exit driveway of Cloverleaf. DPW Director asked about the number of additional catch basins. Mr. O'Reilly explained that there were two more. He added that the revised plan is not finalized and spoke of a fire truck needing to make the 360-degree turn going up the hill.

Mr. Dundas spoke to the issue of the entrance and exit and a large truck having to make the turn onto the property. There was a brief discussion on the gravel driveway and the width of emergency vehicles. Department of Public Works Director Cabral noted that the curb cut location is due to the installation of where the water line will be placed. DPW Director Cabral continued to explain where the water main line would go on the property and what the installation would look like for the property.

Ted Malone said that there is no issue with the water main going under the overpass if that were the new design from DOT. DPW Director Cabral explained it would connect to the existing water line on Fire House Rd. Mr. O'Reilly added if the main is set at the right elevation there should not be an issue. Chair Hultin, asked about shut offs along the line. There was a recommendation from the Fire Chief for an additional Fire Hydrant. Fire Chief Tim Collins spoke to the location of the three fire hydrants.

Ted Malone spoke to balancing two sets of Regulations, one being safe easy access for fire vehicles and secondly what DOT allows for in curb cuts. ZBA Member Todd asked about roof drainage. Mr. O'Reilly said that each building will have their own dry well. Chair Hultin asked about Unit 21 and the steep grade that is there. Mr. O'Reilly responded that it would be a very reasonable slope at 6%. ZBA Member Shedd asked if there were any restrictions with the use of salt. DPW Director Cabral stated that they use very little salt, with 90% sand and he spoke to there being enough storage for snow.

Ted Malone spoke of the parking area and snow storage. He explained the environmental grasses and their ability to handle snow storage. The DPW Director Cabral stated that they have a utility permit into DOT for the water line install. He added that Provincetown Water will comment as

well and he will be meeting with them next week. Ted Malone added that this will be all underground electric on the site. He added that there is an existing pole that they will get their primary electric coming into the property. But all the other factors need to be handled prior to communicating with Eversource. Town Planner Ribeiro asked if there has been calculations on the quantity of the fill coming in and off the site. Mr. O'Reilly said things were estimated by Williams Building Company.

Mr. O'Reilly commented that the total flow from this site is about 8300 gallons. He added that they have designed a plan for collecting the wastewater in two ways. He discussed how the flow would be split, within System A. He explained that one system deals with a little over 4000 gallons of flow, while the other system deals with a little under 4200 gallons of flow. The tanks are sized according to Title V. There is an 8500-gallon primary tank (System A) a 4200-gallon secondary tank. There is a pump chamber which is sized at over 8500 gallons. He mentioned the logistics of the field in order to meet the Title V maximum depth. He said that they want to allow for the pump to run at a more normal occurrence. He added that they have also kept it large for storage. He explained how the pump chamber works. He described the leaching field. He explained the second System B. He said he has been in communication with Emily Beebe, the Health and Conservation Agent. There will be cleanouts provided in case there is ever a blockage.

Ted Malone noted that the pressure dose systems also require an onsite monitoring system that is visible and audible. ZBA Member Dundas, asked if the backup tank is for 24 hours, and if there is a power outage. There was a discussion on wiring the panel for the pumps to except a generator to run the pumps. Mr. O'Reilly said that they can accomplish a safety factor either by enlarging the tank or seeing if the pumps can be wired for the sewage system.

Chair Hultin asked that Mr. O'Reilly go through the number of bedrooms for the anchorage. Mr. O'Reilly stated that under the local bylaw you are required to have 1 bedroom for 10,000 square feet of space. He noted that Title V has the same requirement. There is town water on the site, which means they are not obligated to meet that 1 bedroom per 10,000 feet requirement. Mr. O'Reilly stated that he was going to look at what it would cost to implement alternative.

Ted Malone spoke to the layout of the area and the required acreage to comply with the local bylaw. He commented that there are 3.9 Acres in that section which would require an easement from the State. He noted that there is sufficient acreage of undevelopable land. Chair Hultin asked if the Cape Cod Commission or the Board of Health have a comment on acreage. He said that it has been discussed again this week and that the Town Manager brought it up as an initial comment with DOT. He noted that they will probably not want to restrict their land in such a way. He said that the effects of the project meet the intent of the rule. Town Planner Ribeiro said they have discussed this a little with Town Counsel. There also needs to be a peer review of the project. He said an additional accredited engineer with experience groundwater modeling and nitrogen loading could make an additional assessment on any impacts from the project.

Town Planner Ribeiro stated that it would be a Consultant chosen by the Town and whether ZBA members would want to hire someone to do the review. ZBA Member Todd asked if this

“surplus land approach” has been used somewhere else. Mr. O’Reilly stated that this would not be precedent. He explained how it is being used for personal properties on the Cape. He explained that the 15 acres would have to be restricted for further development of bedrooms.

Attorney Carboni said that part of the 40B process is the Board’s consideration of the waivers of the applicant. They will have to decide whether to waive the local bylaw based on the advice of consultants. The Board agreed to have a third-party consultant and ZBA Member Dundas asked if there will be an additional design showing mitigation on addressing the nitrogen load. Mr. O’Reilly responded that they would either supply secondary treatment or have additional acreage to offset the bedrooms.

Town Planner Ribeiro said he will continue to work on the costs of the IA system with Emily. They discussed where the adjacent land must be located. Town Planner Ribeiro noted that there are local wells abutting and that they may want to step back and ask if this is safe. It was noted to continue that discussion about having land set aside. Ted Malone voiced concern on not waiting for the third-party consultant. Attorney Carboni stated that she has worked with several different firms that understand wastewater. Chair Hultin stated that it was the will of the Board to hire a third-party consultant.

Town Planner Ribeiro said that they also need more information about the fill that will be brought in, calculations on it and how snow storage would occur, consideration of storm water, and site drive configuration. Chair Hultin responded that it was clear to him that the issue of storm water was dealt with on the engineering plan and that information was adequate. Attorney Carboni stated that the other item that should have peer review is the cutting and grading of the property.

Mr. O’Reilly spoke of what the process was going to be for clearing and erosion control and filing with the EPA as there will be clearing of land for the storm water pollution control plan because more than an acre of land is going to be cleared. This filing will provide information as to how this site is going to be controlled during construction. This will also capture how the work will be maintained and who is responsible. If the project includes a consultant, then he advises that they do the erosion control plan. Chair Hultin added concern from when the road is cut in to when it is paved, and the sediment must be addressed. Mr. O’Reilly felt that the main access road would be constructed first. Attorney Carboni referenced the earth removal bylaw be reviewed before the construction phase. Ted Malone said that the earth removal bylaw is nothing that they asked for a waiver for and doesn’t know if it would trigger something that the project may need relief from. Attorney Carboni added that this would be a good time to ask for additional waiver requests in a comprehensive list.

Chair Hultin asked if there was a provision for comment from the Zoning Board for this project to which Attorney Carboni said there was like any other Board people can comment. She suggested that they get a list from the applicant of any waivers from the subdivision control regulations and the Planning Board to comment on those requests. Town Planner Ribeiro said that there is still much to work though, including the parking spaces, snow storage, etc. Mr. O’Reilly stated that they will receive the comments as they become available, and he hopes that

the meeting will take place next week. When a consultant is picked, they can provide an updated draft of all the different aspects and they will provide a list of the waivers.

Town Planner Ribeiro stated that they need to begin looking at those storm water, site erosion control and nitrogen issues and hopefully find a firm with all the expertise. Department of Public Works Director, Jarrod Cabral, suggested that the Cape Cod National Seashore may have ground water data that might be available. The department currently works with a firm that does ground water monitoring for the landfill. Attorney Carboni explained that there is no bid process requirement with respect to a consultant. Chair Hultin opened the Public Hearing to Public Comment.

Public Comment started with, Peter Herridge, 15 Overlook Drive, he commented that he is a strong proponent for work force housing, but he was concerned about 70 bedrooms being on less than 4 acres and that the developer wants to dismiss the rules that protect the ground water. He urged the Board not to allow this as the sewage needs to be treated on site. He read into the record a letter from Kevin Kuechler, of the Water Resources Oversight Committee. He further read that according to the Cape Cod Commission, the project is supposed to have a Title V compliance Septic System based on the preliminary calculations performed by Commission staff. This would equate to nearly 19 milligrams per liter of nitrate. The flow of ground water will go from the site to pond village then to Shearwater, which are the worst nitrogen hot spots in Truro. He sighted the EPA standard that was set 40 years ago as being 10 milligrams per liter. If that water is given to a baby, they will die from Blue Baby Syndrome. He noted that the Cape Cod Commission said under 5 milligrams. He stated that the hot spots in Truro, at Pond Village and Sheerwater, already have high levels. He added that much lower levels of nitrates chronically ingested increases cancer rates, birth defects, and causes hypothyroidism.

He commented that he has done a review of the effects of nitrates, Medical Journal, *Drinking Water Nitrate and Human Health an Updated Review* published in the International Journal of Environmental Research and Public Health, he cited the health implications below the 10 milligrams. Chair Hultin asked if it was going to directly increase the nitrate levels in the areas he's mentioned. He added that the flow goes west and south west directly to Pond Village. Mr. Herridge felt a detailed and intensive engineering study needs to be done.

Debbie Beth Parker, 2 Waterview Heights Rd, commented that the plan was unacceptable as is. She spoke of the town not choosing a builder for a project of this magnitude that uses green technologies. She said that the Septic System being proposed should not be granted a waiver. She felt that 16 units would be best for the acreage allowed. She spoke of the restrictions of water usage on the grounds during the summer months per the Provincetown Water Department. She noted that the builder shouldn't have designed something that requires many waivers. The design she felt needs to be changed to protect the water supply. Paul Kiernan, 10 Benson Rd., asked that his comments be a part of the record and he was concerned about the effluent coming out of the project. He reiterated that the project has 70 bedrooms going into 75 foot by 75-foot adjacent leach fields.

John Slater, 13 Tryworks Road, stated his concern regarding the private wells. He showed a map of the well head protection areas which run north and south of the Cloverleaf. He explained how they are the recharge areas for the private wells. He asked what the rush was and why other alternatives were not being sought. He asked the Board why there was a rush and why they were not building a property that made the local regulations or the property could include an IA system. He referred to affordable housing documents that stated that the total number of dwellings should not exceed 4 units per acre. He added unless there are compelling reasons, what are the compelling reasons he asked of the Board.

Chair Hultin responded that there is a housing shortage and they are under the Commonwealth 40B law that requires that we accommodate this kind of development. He felt that they were gathering testimony to make a reasoned decision. He added that Chapter 40B requires that they consider proposals and provide affordable housing. Mr. Slater stated that he understood that but questioned where they were providing the affordable housing.

Jack Reimer, 7 Fisher Rd, with regard to drinking water quality referred to Reynolds Versus the Zoning Board of Appeals of Stow, September 15, 2015, in which if there are adjacent private wells there will be elevated nitrogen levels. He felt that there was no reason that the need for affordable housing outweighed the health concerns of existing abutters. He added that he was very concerned what the effects will be if the water supply is polluted by asking for any waivers.

Eric Parker, 2 Waterview Heights, stated that he was very aware that the town needs affordable housing but in looking at the plans and the requests for the waivers, he was glad that they were seeking a consultant. He added that affordable housing shouldn't be at the expense of our environment. He asked what is going to happen with maintenance and the health standards for renters and monitoring living conditions, and exterior maintenance, and what if the property management goes bankrupt. He added that he was also worried about rising taxes. He also noted concern for the drinking water and the rural character of the town.

Ted Malone stated that there are numerous funding sources involved in the financing of this development. There are biannual and annual monitoring that includes physical inspections both inside and out and supplements managements monitoring of the units with multiple funding sources that are also involved. The town will continue to own the land. The property will pay property taxes with an income approach to value. He added that the consultants will address the issue with respect to water quality. He felt that the greater issue was the storm water runoff in the DOT roadway draining into catch basins.

Chair Hultin asked Attorney Carboni to speak to the requirements for 40B. Attorney Carboni stated that it was a statute enacted in 1969 to promote the construction of affordable housing throughout the Commonwealth. Generally, a 40B project almost always allows for greater density than would normally be allowed and allows the Board to waiver any bylaw that can be allowed and would prohibit the construction of that project on that site. If the Board decides that it cannot or should not waive a bylaw the applicant has the right to appeal to the housing appeals committee and they determine if the Board's decision is consistent with the 40B statute. The

heart of 40B is the term “consistency with local needs” which weighs the need for affordable housing against local concern including health and safety.

Chair Hultin added that if you provide enough 40B housing then you are free from some of the constraints of 40B housing. Attorney Carboni stated under the 40B statute and the Department of Housing Regulations there is something called Safe Harbor, if the town has reached any of the thresholds or statutes, and shows that the town is producing affordable housing, if there is an applicant then there is now allowable appeal by the applicant. She spoke of the 10% of the year-round housing units being subsidized under the statute and 1.5 % minimum of the land area being devoted to affordable housing or having a housing production plan from DHCD certifying compliance. The current applicant has come before the town with the town having not met any of the thresholds, that gives communities Safe Harbor. The town currently is not consistent with local needs and has not met any of the thresholds that this statute sets out.

Mr. Slater stated that he was aware of the document but felt less units could be built and as far as the safety consideration. Town Planner Ribeiro stated that if an application is submitted, they must review it. Mr. Slater added that it was the Town’s choice to allow the use for a 40B arraignment. Mr. Slater reiterated that he did not feel this was worth the health of the community. Mr. Parker thanked the developer for addressing his concerns. Mr. Reimer asked if the Cloverleaf could be part of the 1.5% of the land area spoken of earlier by Attorney Carboni. Town Planner Ribeiro commented that there is funding for consultants. Attorney Carboni added that applicant funding for peer review is very routine. She added that the procedure under Chapter 44 §53G is an account is established and the applicant pays funds into that account and supplements as needed. Town Planner Ribeiro gave a list of the Site Plan Review criteria which provides a list of items the Board should be considering.

**Chair Hultin made a motion to continue the public hearing to December 12, 2019 at 5:30pm Truro Town Hall. John Dundas seconded. All in favor. Motion carries.**

Respectfully submitted,



Nicole Tudor

