

**TOWN OF TRURO
ZONING BOARD OF APPEALS
MEETING MINUTES
November 5, 2018
TRURO TOWN HALL**

Members Present: Chair-Bertram Perkel, Art Hultin, Chris Lucy, John Dundas, Fred Todd, Alternate-Susan Areson

Members Absent: John Thornley

Others Present: Interim Town Planner-Jessica Bardi, Atty. Benjamin Zehnder, Yvette Dubinski, Richard Sullivan, Joanne Barkin, Roland Letendre, Joan Holt

Chair Perkel called the meeting to order at 5:30 pm.

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.

Atty. Zehnder approached the Board.

Chair Perkel stated that he'd just been handed an email from Atty. David Reid stating that he was dealing with a family medical emergency and would not be able to attend the Zoning Board meeting. Atty. Reid asked for the Public Hearing to be postponed. Chair Perkel's first instinct is to say no. Atty. Zehnder asked to be heard. He stated that Atty. Reid has submitted extensive written materials and his arguments are laid out in writing. This meeting was specifically scheduled for two reasons:

1. To be able to hear this in the absence of other cases.
2. To work around the availability of the complaining abutters.

Atty. Zehnder (and his clients) would like to get this heard. They respect whatever decision the Board makes, and he respects Atty. Reid.

Chair Perkel polled the Board.

Member Areson would be inclined to rely on the materials submitted and go forward with the hearing. Member Todd agreed. The Board has received a lot of material. He would like to have some exchange with Atty. Reid if possible.

Members Lucy and Dundas would like to move forward.

Member Hultin certainly understands the reasons for wanting to go forward, however in fairness to counsel, Atty. Reid should be allowed to be heard. There is a lot of material to review and Member Hultin is not sure he wants to vote on something without having the "back-and-forth" opportunity to speak with Atty. Reid.

Chair Perkel suggests continuing the meeting over at the Public Safety Facility.

Member Lucy made a motion to continue the meeting at the Public Safety Facility with a fifteen-minute recess. They will reconvene at 5:50pm.

Member Hultin seconded.

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

Meeting reconvened at the Public Safety Facility at 5:50pm.

Chair Perkel stated that the Board would continue their discussion which they started at the Town Hall before they moved over to the Public Safety Facility. He reiterated that the Board had just been given a letter from Atty. Reid stating that he would be unable to attend the meeting and was asking for a postponement. He's inclined to grant the postponement.

Yvette Dubinski came up (Atty. Reid is her lawyer), she's representing the abutters who are questioning the granting of this special permit. Moving forward would leave the abutters without Counsel, which doesn't appear to be fair. Member Dundas asked if Ms. Dubinski represented all the abutters when she says the public hearing should not take place tonight and be continued. She responded that she felt confident that all the abutters felt the same way.

Richard Sullivan came up to speak, he lives at 2 Sandpiper Road and is not an abutter. He stated the paperwork has been filed, it's been reviewed by the ZBA, and he feels they should be able to move forward.

Joanne Barkin came up to speak. She noted that everyone has come back multiple times, and she feels the ZBA has been very generous in granting continuances. Now that Atty. Reid has a genuine reason for not being able to attend, the ZBA is debating whether or not to move forward. She feels that's outrageous. She wants the ZBA to be fair. The side opposing the special permit deserves representation and the Board should continue, out of fairness.

Roland Letendre came up to speak. He explained the reason for a couple of the continuances. He noted that he is paying his lawyer constantly. He feels Atty. Reid's argument is laid out, and he thinks the Board should be able to move forward. He doesn't think Atty. Reid is going to come up with anything that isn't already written out.

Atty. Zehnder suggested that the Board open the hearing and allow him to make his presentation. The Board will be able to hear the presentation, hear comments from abutters, and not close the hearing tonight. Atty. Reid will be able to watch the recording of the meeting and then come in and rebut anything Atty. Zehnder puts forward. The Board will then be able to ask questions of Atty. Reid. Instead of waiting, if they move forward tonight it will give interested parties and counsel some time to review testimony. This will also give Atty. Zehnder some indication from the Board where they stand on this request. Chair Perkel feels that Atty. Zehnder's proposal is reasonable.

Chair Perkel stated that they would now proceed with the variance application:

2018-012/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). Applicant seeks a Variance w/ref to Sections 10.4 and 50.1A of the Truro Zoning Bylaw for 14.27 feet of lot frontage on Button Hill Road or in the alternative, 45.82 feet of lot frontage on Thornley Meadow Road.

Member Lucy wished to make a disclosure before discussion started. In 2002 he worked for the Dubinski's as a landscaper, and in 2008 he worked for the Thornley's (when they owned this property) as a landscaper. This disclosure will not hinder his ability to make a decision which will be determined on the merits of the case.

Atty. Zehnder stated that there are two applications before the Board. They will be asking the Board to vote on an Application for Special Permit for alteration of the structure on 10 Thornley Meadow Road, the more recently filed is an application for a variance for lot frontage requirements for alterations of a residence at 10 Thornley Meadow Road. The plans which have been submitted consist of:

- A site plan dated January 26, 2018, revised March 22, 2018.
- A planting plan dated June 13, 2018.
- Several existing plans (basement, first floor, second floor, roof).

- Elevation plan.
- Proposed basement plan, proposed first floor plan, proposed second floor plan, two sheets of proposed elevation plans.

Atty. Zehnder described the lot regarding measurements/frontage. The Board has been provided with a sketch plan done by Ryder & Wilcox which shows the frontage of 10 Thornley Meadow Road. He asked that the Board make that part of the record. What's being proposed, in addition to the existing structure, is to add another section to this house on the south side of the structure. This proposal would create a 7-bedroom dwelling with a 9-bedroom septic system. It would remain a single-family dwelling and there would be no change to the location of the driveway. Without granting the variance, the structure will be frozen the way it is, which he believes creates a substantial hardship to the applicant. He also feels that the Board cannot make a finding that the replacement of this house with a larger house will be a substantial detriment to the public good. Chair Perkel asked how large the house currently is. Atty. Zehnder replied that it's approximately 7400 sq. ft. in floor area. Atty. Zehnder went on to state that the lot size is 4.75 times larger than the minimum lot size in Truro. The lot coverage is 2.03 percent while the average lot size in the neighborhood is 4.94 percent.

Member Areson had a question regarding a second kitchen in the guest house, above the garage. Is it allowable? Atty. Zehnder was not sure. He stated it's the Building Commissioner's position that you cannot have a cooking facility, as that would create a separate dwelling. They would accept a condition that there be no kitchen.

Member Todd had a question about the height calculations, specifically in the exercise room, and does that constitute a story. If it is considered a story, then the height would be considered excessive. Atty. Zehnder had two responses;

1. The specifically asked their engineer to provide a height calculation. Looking at the site plan itself there is a proposed ridge elevation and an average existing grade elevation, and a height. The Engineer has done those calculations as required by the bylaw. They have the house at 29.4 feet including the entirety of the structure, including the exercise room.
2. In response to whether this is a three-story house. He read from the bylaw as to how a basement is handled. Only two corners of the basement are exposed, and those belong to the exercise room. The remainder of the basement of the structure, as you go around the house, is shielded by grade level.

Member Hultin asked if Atty. Zehnder had any information on the creation of Thornley Meadow Road and Button Hill Road, and their evolution. He stated the appeal arose out of the Building Inspector's determination that Thornley Meadow was a non-conforming road, and Member Hultin wonders if it is in fact a non-conforming road then how can Button Hill be conforming? Atty. Zehnder wonders the same thing. He stated that in 1994 a subdivision plan was approved by the Planning Board which created this division of land into 4 or 5 lots. The road was vetted at that time by the Planning Board and they granted certain waivers from requirements. This was for Thornley Meadow and Button Hill at the same time. Member Hultin then stated that Thornley Meadow Road is a private way, owned by the abutters to the road, and was created at the same time as Button Hill Road. He then asked if Button Hill Road was owned by the abutters to that road. Atty. Zehnder believes that when the Thornley's divided up the property, the ownership of the lots included ownership of the road. The point Member Hultin is getting at is; are these two roads or one road with two names? Atty. Zehnder thinks it's one road and that the 2nd name was given only for the reason to create frontage for the Dubinski lot. Member Hultin thinks that's an important item to determine. Atty. Zehnder stated that if the Board finds that this is one road, then he does not think they need a variance.

Member Todd stated that in looking at the 2015 street inventory, Button Hill has a date of 1994 and Thornley Meadow 1993. Atty. Zehnder said that the subdivision plan, dated November 1993, showed Button Hill Road. Ms. Dubinski came up and stated that there was a whole other side of this which they

needed their attorney for. Chair Perkel informed her that Atty. Reid would have an opportunity to present the information. Atty. Zehnder added that Mr. Letendre wished to remind the Board that there is not a road up there, just entrances to driveways. Chair Perkel stated the Board has been up there and they have seen the location.

Member Lucy wished to go back to what Member Hultin was questioning. He wonders if they all still have the minutes from the Planning Board back in 1993. Those minutes address what will be paved, what will be crushed stone, etc. It was given waivers to not be constructed as "full spec". He asked Atty. Zehnder if there is access to the profiles of the original road. There is an old plan for Thornley Meadow that shows stations, and it takes you up to 1100 feet and that's the end of Thornley Meadow. It does not show Button Hill. The other plan (1993-110) will show that profile and define whether there are 1 or 2 roads.

Chair Perkel presently feels that the hardship is probably proven, and he could see the conditioning of the lot being required. There is a third element which concerns him. If the applicant is granted a variance without conditions, it becomes a totally lawful lot. With that, the owner could put the pool back, and do any number of things. Chair Perkel had asked legal counsel if the ZBA had the power to put conditions if they approved. Legal counsel had responded, stating that the ZBA did have the power to condition the variance. Chair Perkel then asked members of the ZBA for suggestions on conditions if they approved the variance:

- Member Todd not only had concerns with the size of the structure, but also the amount of light spilling out from the structure. He does not know the answer but certainly feels it's a matter for discussion.
- Member Hultin feels that if there are going to be limits, they have to be reflective of what is before them. He would consider items which are concerning to him, such as the use. Is the structure for family use, or a conference center? There could be restrictions on the possibility of rentals. As to the size, he does not feel it's the job of the ZBA to determine. If the restrictions don't pass at Town Meeting, then they don't apply for the ZBA. It is not their job to do what Town Meeting doesn't accomplish.
- Member Dundas concurs with Member Hultin. His concern is that the coverage of the structure vs. the size of the lot does not belong in front of the ZBA, he believes that is a Town decision.
- Member Lucy agrees. He does not feel they should consider the size when there is no bylaw about anything of that nature. He also pointed out that in the matter of use, whether an Airbnb or a conference center, the Town does not have anything on the books regarding that. He wonders if the house slowly increases in size. Right now, it's 4000+ square feet, and they are proposing 7000+. Will the next owner come along and propose increasing to 9,000+? That is something he would consider a condition on.

Chair Perkel suggested that this will require four out of five votes, and it's something Counsel should consider. Member Areson noted that some of the neighbors have expressed concern over the berm that's going to be removed, where the exercise room will be. The berm acts as a "screen" to the neighboring property. Atty. Zehnder stated there are two issues.

1. What project does the ZBA feel is appropriate for the granting of a variance.
2. What project does certain interested parties feel is appropriate.

The owner immediately removed the swimming pool at the request of the abutter. Atty. Zehnder also had a conversation with Atty. Reid two or three days ago, asking if there was something they could do to manage the project in such a way that would be acceptable to the client. Atty. Reid responded that he did not think so.

Ms. Dubinski came back before the Board. She stated that the issue has to do with the amount of land that the Letendres have on this road which is much less than what Atty. Zehnder has suggested. According to the bylaws, you have to have a certain amount of frontage on a road to increase a

structure and this house does not have that. She thinks the Letendre's have asked for this lis pendens action to the Thornley's. The Letendre's know they do not have enough frontage, and they are asking the ZBA to make an exception. Chair Perkel stated that they are allowed to ask for the exception. He reassured Ms. Dubinski that Atty. Reid will be able to come and make his presentation.

Joan Holt came up to speak. She'd like to discuss the question of the detriment to the neighborhood. She feels the Board has mostly served the applicants, and it's rare that they have acted on behalf of the abutters. She asked the Board to look at the audience. It's a community of mostly small homes. The Dubinski's property has several buildings but they are small and separated. She stated that suddenly there are people coming into the community with no idea what the surrounding homes look like. Her house is 1800 square feet. The large structure proposed will change the look of the entire neighborhood. She implored the Board to think about the community.

Member Hultin could not disagree more with the speaker. The Board, over the years, has done a very good job at representing the Town, the neighborhoods, and the individual property owners by the Zoning Bylaws. If the residents want different Zoning Bylaws, then it's their job. The Zoning Board of Appeals job is to enforce, interpret, and to make exceptions to the Zoning Bylaw as needed.

Atty. Zehnder asked for a continuance to the November 26, 2018 meeting of both the Special Permit and the Variance Public Hearing.

Member Todd made a motion to continue Public Hearing 2018-002/ZBA and Public Hearing 2018-012/ZBA - Timsneck LLC to the November 26, 2018 meeting.

Member Dundas seconded.

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

Chair Perkel adjourned at 8:25pm.



**Respectfully Submitted,
Noelle L. Scoullar**

