



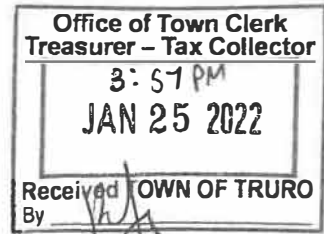
# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

December 14, 2020 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



**Members Present (Quorum):** Art Hultin (Chair); Fred Todd (Vice Chair); Chris Lucy (Clerk); John Dundas; John Thornley; Darrell Shedd (Alt.); Heidi Townsend (Alt.)

**Members Absent:**

**Other Participants:** Barbara Carboni – Interim Town Planner and Counsel; Liz Sturdy – Truro Office Assistant; Emily Beebe – Conservation Agent and Truro Board of Health; Sally McSween (Applicant); Gary Locke (Engineer for Ms. McSween); Lester J. Murphy (Attorney for Ms. McSween); Christine Van Genderen (Applicant); Ben Zehnder (Attorney for Ms. Van Genderen) and (Attorney for Al and Marie Belding, Abutters to 538 Shore Road); Ted Smith (Architect for Christine Van Genderen); Kaye McFadden (Builder for Christine Van Genderen)

Remote meeting convened at 5:30 pm, Monday, December 14, 2020, by Interim Town Planner and Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Interim Town Planner and Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment.

**Public Comment Period**

No members of the public offered comment.

**Public Hearing**

**2020-006/ZBA – Ebb Tide on the Bay Condo Trust** for property located at 538 Shore Road, Truro, MA (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 30288, Page 288). Applicant seeks a Variance from Section 40.3.B.2 of the Truro Zoning Bylaw for a reduction of parking spaces due to relocation of buildings and a Special Permit under Section 30.7.A of the Truro Zoning Bylaw for reconstruction of pre-existing, non-conforming structures, a move closer to Shore Road and elevated to meet FEMA standards. Chair Hultin invited Mr. Murphy, attorney for the Applicant (Ms. McSween) to present background and information.

Due to technical difficulties, Chair Hultin then recessed the meeting for five minutes at 5:40 pm and reconvened the meeting at 5:45 pm with the Members present.

At 5:45 pm, Chair Hultin called the meeting back to order and Mr. Murphy apologized for his technical issues. Mr. Murphy then started his presentation and stated that over the last couple of years severe erosion has occurred on the property affecting buildings in their current position on the property. Mr. Murphy said that the condo owners have worked with engineers and Town officials to come up with a

solution which would require the physical relocation of three buildings closer to Shore Road, rebuild them, and raise them to meet FEMA flood plain requirements for elevation. Mr. Murphy turned over the presentation to Mr. Locke who provided more detailed information on the proposed plan. Mr. Locke described the three structures which needed to be moved closer to Shore Drive. Mr. Locke said that the raising of the structures about 8' and would result in the height dimension just under 30'. The height would be in accordance with the Zoning bylaw. Mr. Locke stated that they would use impact hammers to install the pilings as it will minimize vibrations to the structures as well as the dwellings on the Abutters' properties. Mr. Locke said the project would also include a new innovative septic system located in the parking lot. Mr. Murphy said that the proposed project would result in the loss of three of twelve parking spaces which would be creating a non-conforming situation rather than a current conforming situation. Mr. Murphy noted that this would introduce severe financial hardship for those unit owners who no longer have 2 parking spaces per unit as required by Town bylaw. Mr. Murphy further added that many units are uninhabitable or dangerous to use due to weather and storm surge which has severely damaged the foundations of the buildings. Over the last three years, in meetings with Conservation Agent Beebe and Board of Health, it became clear that the only solution was to move the buildings back to the minimum requirement of setback along Shore Road and to put the buildings on pilings which would allow water to flow under the buildings during storm surge. Mr. Murphy said that it was necessary to remove the three parking spaces to properly address the erosion situation along Beach Point (to include the elevation reduction from the high tide marker down to Cape Cod Bay) preserve the investments of the remaining unit owners, and to create a long-term solution. Under this proposed plan, only the three 1-bedroom units would lose one parking space which would minimize the impact of financial hardship among the condo owners. Mr. Murphy stated that this project would improve the property and not be detrimental to the neighborhood. Mr. Murphy noted that he has had discussions with Mr. Zehnder (who represents the Abutters to the northeast) to which the Applicant and the Abutters would agree to specific conditions if the ZBA would grant the relief requested. In his closing remarks, Mr. Murphy stated that the project would meet the intent of Bylaw 10.2 as it would promote the health, safety, convenience, and welfare of the Town's residents. Furthermore, completion of the project would preserve the value of land and buildings, preserve natural resources, and provide a more appropriate use of the property. Mr. Murphy added that he had a letter from Conservation Agent Beebe that it has been the goal of her department to see these buildings moved as proposed. Mr. Murphy thanked the ZBA for its consideration of the Variance and the Special Permit. Chair Hultin asked Conservation Agent Beebe for her input and Conservation Agent Beebe stated that the Conservation Commission's conditions to include the three buildings be moved out of harm's way and meet the FEMA requirements so the proposed plan could be approved. Conservation Agent Beebe emphasized the negative impact that the three buildings currently have on the severe erosion situation. Conservation Agent Beebe added that the Board of Health has only looked at this project in a preliminary manner. Chair Hultin asked Members for their questions and comments. Member Dundas asked Mr. Locke and Conservation Agent Beebe asked for clarification as to the impact zone that would be affected. Mr. Locke explained that the use of impact hammers applies a newer technology with minimal disturbance and that it would protect the neighboring structures. Conservation Agent Beebe said that she recommended when the Conservation Commission sees a final plan, it should consider the time of year of the project's work. Conservation Agent Beebe said that she didn't have any evidence that pile driving like this would be detrimental to the environment, but the overall benefit would be mitigated. Member Shedd asked about the septic system for the property. Mr. Locke replied that the plan showed the two septic tanks, an innovative alternative technology treatment unit and a large pressure hose leaking bed. Member Townsend asked if the six units are separately owned, and Mr. Murphy replied in the affirmative. Member Townsend then asked if they are year-round, and Ms. McSween replied that they were not, but it is her intention to rebuild so that they have the capacity for year-round occupancy.

Member Townsend asked if parking could exist under the new buildings and Mr. Locke replied that there would be cross-bracing under the buildings so parking would not be available. Member Lucy asked about the detriment to the neighborhood as he didn't see a plan for the moved buildings when the pilings are being driven and Mr. Locke said that the buildings would be demolished. Member Lucy asked how deep under the ground the pilings must be driven and Mr. Locke replied from 8'-20' in depth. Member Lucy then asked for more detail for the height on the buildings which will have a second floor as on the plan the peak elevation is listed on the plan at 40'. Chair Hultin told Mr. Locke that information needed to be provided and Mr. Locke replied that he will get that information and provide it to the Members. Mr. Lucy then asked if the Town could impose a bond to protect the neighbors from impacts from the construction such as cracked walls, fallen paintings and pictures. Mr. Murphy stated that responsibility fell upon the Applicant and Mr. Lucy commented that a pre-construction survey of neighboring homes should be taken to protect those neighbors if issues arise. Vice Chair Todd stated that all his questions were asked by the previous Members. Member Thornley asked if the Applicant considered the impact of the rising sea levels and Mr. Murphy said that they did and that is why the buildings will be elevated. Chair Hultin asked Conservation Agent Beebe if once the construction is completed if there would be the creation of a coastal dune and Conservation Agent Beebe said that re-establishment of the coastal dune will be very important. Chair Hultin then asked Mr. Locke if the second story dormers fall within the setback requirements for the new buildings. Mr. Locke replied that there will not be the creation of the second floor, but the dormers will be like those found in an attic and keep the buildings look as much "Beach Point" as possible. Chair Hultin asked Mr. Locke to change the area lot coverage number (approximately a 1% difference) to reflect the accurate calculation moving forward and Mr. Locke agreed and will resubmit with the updated number. No other Members had questions, so Chair Hultin invited Mr. Zehnder, representing Mr. and Mrs. Al Belding of 542 Shore Road and who are Abutters, to speak. Mr. Zehnder confirmed previous conversations with Mr. Murphy and stated that he was not in opposition to the granting of the Special Permit, but he would like to add conditions to the granting of the Special Permit and Variance. Mr. Zehnder suggested the Members to consider and add the following conditions: 1. Applicant has agreed that construction would not occur during the summer season (dates to be specified) and that be a condition for the granting of the Special Permit. 2. Applicant has agreed to relocate the septic vent to the southside of the parking lot along Shore Road and that be a condition and part of the plan revision. 3. The method of construction is of great concern to the Abutters and listening to the hearing tonight has not alleviated that concern and how it may impact the Abutters' home and the stability of the coastal bank. Mr. Zehnder commented that the ZBA should wait until the Conservation Commission completed its work before the ZBA granted the Special Permit and Variance. Mr. Zehnder suggested that what would be good for the Abutters is for the Applicant to engage a Civil Engineer to evaluate the structure and the land of the Abutters, and at the end of the process, determine if there has been any damage or harm to the Abutters property. Mr. Zehnder added that it would be advisable to have an indemnification or a bond or an insurance policy in the Abutters' names so that it is not a promise to fix any damage but that there is liability. Mr. Zehnder stated that he had not spoken yet with Mr. Murphy about this but would very soon. Mr. Zehnder thanked the Members for their thoroughness and consideration. Chair Hultin asked Mr. Murphy what the next step was in the process with the Conservation Commission as there may changes before the ZBA reviews final drafts. Mr. Murphy replied that the Variance approval by the ZBA was necessary before going to the Conservation Commission. Mr. Murphy also stated that he would seek Site Plan Review relief from the Planning Board. Chair Hultin offered to take a straw poll to gauge how Members felt. Mr. Zehnder offered a recommendation that the Members could vote on the Variance and continue the hearing on the Special Permit to another date and Mr. Murphy agreed. Interim Town Planner and Counsel Carboni stated that the Site Plan Review is necessary and opined that the Planning Board would not likely approve relief. Interim Town Planer and Counsel Carboni also stated that since both parties

agreed for the Variance and a continuance of the Special Permit hearing that she would be more comfortable with a withdrawal of the application for the Special Permit without prejudice and for a refiling later following a decision by the Conservation Commission. Chair Hultin then asked if any members of the public who would like to comment. Mr. Michael Flannery, of Unit #6 at Ebb Tide, identified himself and wanted to correct the record for the number of 1-bedroom units, 2-bedroom units, and 3-bedroom units. Mr. Flannery stated that Mr. Murphy was incorrect in the types of condos were on the property. Mr. Flannery stated that there is one 1-bedroom unit, one 3-bedroom units and the rest are 2-bedroom units. Chair Hultin asked Mr. Locke for a response with the information that he had. Mr. Locke then stated that there were 11 bedrooms: two 1-bedroom units, three 2-bedroom units, and one 3-bedroom unit. Chair Hultin noted that this does pose a problem as there appears to be a discrepancy in how the decision was made to remove a parking space for each 1-bedroom and a new plan would have to be developed with condo owner agreement. Chair Hultin conducted a straw poll survey with Members and there were Members who were not in opposition to the Variance but one Member who was opposed for the same reason that the Special Permit hearing would be continued. Chair Hultin proposed a withdrawal without prejudice or a continuance to Mr. Murphy and he replied that he would like to continue the hearing. Chair Hultin asked for a motion to continue to the ZBA's next meeting on January 25, 2021, at 5:30 pm.

**Member Dundas made a motion to continue the matter of 2020-006/ZBA until January 25, 2021.**

**Chair Hultin seconded the motion.**

**So voted, 7-0, motion carries.**

Chair Hultin advised Ms. McSween, Mr. Murphy, and Mr. Locke of the continuance until 5:30 pm on January 25, 2021. All thanked the Members and left the meeting.

**2020-007/ZBA – Katherine S. Cook and Christine Van Genderen** for property located at 38 Cliff Road, Truro, MA (Atlas Map 32, Parcel 19, Registry of Deeds title reference: Book 33307, Page 344). Applicant seeks a Special Permit under Section 30.7.A of the Truro Zoning Bylaw and G.L. c. 40A, § 6 for alteration and extension of a non-conforming dwelling § 50.1(A) n.3, 8 (setback from road; lot area); § 10.4 (frontage/"street") in Seashore District. Chair Hultin invited Mr. Zehnder to provide background on behalf of Ms. Van Genderen. Mr. Zehnder introduced Ms. Van Genderen, Mr. Smith, and Ms. McFadden to the Members. Mr. Zehnder stated that this application is to remove an existing home down to its foundation and build it back with small additions. Mr. Zehnder further that home was built in 1950 according to the Assessor's Atlas. Based on the lot size, in the Seashore District, the Bylaw permissible gross floor area is 3,326 square feet and the proposed gross floor area is 2,140 square feet. The proposal is to build back the house to current code and will add two elements: a screened in porch on the north side of the property and the other is to fill in a notch on the back side of the property to square off the property with a 6'6" wide strip. The current design and proposed design are included, and the architect has provided very specific floor plans. The project is non-compliant with Zoning in two respects: 1. Cliff Road doesn't meet current Bylaw provisions. As it is a dirt road and does not meet the quality requirement so to make any alterations to a non-conforming lot a Special Permit is needed. 2. In the Seashore District, a setback of 50' from any ways is required but this lot area does not meet that requirement in its distance to Cliff Road, so a Special Permit is required. Mr. Zehnder closed by stating that they hope the Special Permit is granted. Mr. Hultin asked for clarification on the floor plan about an entry way deck but not on the Site<sup>k</sup> Plan. Mr. Zehnder stated that they can make the correction. Mr. Hultin then asked if there was any usable space in the roof overhang and Mr. Zehnder stated that there was not. Mr. Hultin opened the discussion to the Members. Vice Chair Todd asked if the Planning Board has reviewed this yet and Mr. Zehnder replied that the site visit will be conducted tomorrow at 2 pm

followed by a Planning Board hearing on the matter this Wednesday evening. Mr. Zehnder stated that it would be appropriate for the ZBA to continue this matter until after the Planning Board reviews the project. Interim Town Planner and Counsel Carboni also noted that building height dimensions were not included on the proposed plan and should be included. Mr. Zehnder said that the proposed building height is well below the 30' maximum height for a gable home but will make sure it is added to the plan. Chair Hultin asked Member Townsend to have any comment or questions. Member Townsend said she would like to wait until after the Planning Board has rendered a decision. Members Dundas, Shedd, Thornley, and Lucy had no comments. Chair Hultin asked for a motion to be made in this matter for a continuance until January 25, 2021, at 5:30 pm.

**Vice Chair Todd made a motion to continue this matter to January 25, 2021, at 5:30 pm.**

**Member Townsend seconded the motion.**

**So voted, 7-0, motion carries.**

After the vote, Chair Hultin announced the continuance and Mr. Zehnder thanked the Members. All parties involved with this matter departed the meeting.

#### **Board Action/Review**

Chair Hultin asked Interim Town Planner and Counsel Carboni about the review and the discussion regarding the clarification of lot coverage/square footage (reference Bylaw sections) regarding the ZBA Application and Procedure for Hearing – last modified July 2019. Members were unaware of the reason this item was on this evening's agenda so it will be addressed at a later meeting.

Chair Hultin led the discussion of future meeting dates and he stated that there was no need to change the proposed dates and times. Vice Chair Todd stated that he had the proposed dates for all of 2021 and there were no objections to the proposed dates.

#### **Approval of Minutes**

Chair Hultin announced that the ZBA was current on all minutes so there were none to approve.

Chair Hultin reminded Members that there was another meeting on Cloverleaf this coming Thursday. Public comments would be limited to 45 minutes.

Member Lucy noted that he may not be at Thursday's meeting as he may be out plowing due to inclement weather, so he wanted to ensure that remaining Members were qualified to vote if necessary. Chair Hultin thanked Member Lucy for bringing up this topic.

Chair Hultin asked Interim Town Planner and Counsel Carboni if she had anything to say before the end of the meeting. Interim Town Planner and Counsel Carboni commented that she was working diligently on a draft decision for Cloverleaf prior to Thursday's meeting. Chair Hultin commented that he didn't anticipate a vote on Cloverleaf at Thursday's meeting as this process would likely take additional time to get it right.

**Member Thornley made a motion to adjourn at 7:37 pm.**

Member Shedd seconded the motion.

So voted, 7-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

