



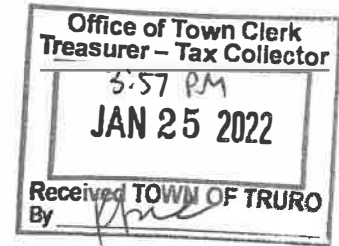
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

January 25, 2021 – 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; Christine Van Genderen (Applicant); Ben Zehnder (Attorney for Ms. Van Genderen) and (Attorney for Anne Peretz) and (Attorney for Tom and Dianne Didio); Kaye McFadden (Builder for Ms. Van Genderen) Dan Costa (Architect for Anne Peretz); Brad Malo (Engineer for Anne Peretz)

Remote meeting convened at 5:30 pm, Monday, January 25, 2021, 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 Continued

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 announced that the Applicant submitted a letter to the ZBA from Attorney Murphy to withdraw without prejudice the application previously submitted.

Vice Chair Todd made a motion to allow the Applicant to withdraw without prejudice for further review.

Member Lucy seconded the motion.

So voted, 7-0, motion carries.

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 announced that since the last hearing, the ZBA had received an email from Lauren McKeen, Planner of the National Seashore, and Chair Hultin asked Interim Town Planner and Counsel Carboni to read the letter. Ms. McKeen wrote the National Seashore's files indicated that the:

1. Property was ineligible for a Certificate of Suspension from Condemnation, and it was built after the September 1, 1959, cutoff date established by the Park's legislation
2. National Park Service can acquire the property without owner's consent, and acquisition by the federal government would be at fair market value determined by a contracted appraisal
3. House was expanded in 1977, 1983, and 1989.
4. National Park Service preferred to see adherence to the Town's zoning to the maximum extent.

Member Dundas expressed concern over the language of the email and Interim Town Planner and Counsel Carboni stated that this email was a reiteration of the National Seashore's authority but did not mean that the federal government was going to acquire the property. Interim Town Planner and Counsel Carboni also shared the Planning Board's decision for approval. Members carefully reviewed the Planning Board's decision, findings, and conditions. Chair Hultin gave Mr. Zehnder the opportunity to address the Members. Mr. Zehnder announced that Ms. Van Genderen and Ms. McFadden were also on the line. Mr. Zehnder reviewed the history of the application and reiterated that the house was built prior to September 1, 1959, according to the Truro Assessor's records. Mr. Zehnder noted that the new proposed house is 2/3 of the allowable gross floor area for the lot size and the proposed height of 26.1' above grade was under the height limit as cited in the Bylaw. Mr. Zehnder noted that there should not be an issue of sizing and massing as it is smaller than the existing homes in the neighborhood and many of those are 2-story homes which this house is not. Mr. Zehnder also noted that he sent the proposed stamped plans on January 20, 2021, to the Planning Board and ZBA. Mr. Zehnder then emailed the proposed stamped plans during this hearing to Interim Town Planner and Counsel Carboni so she could share with the Members. Chair Hultin noted that Mr. Zehnder said that there was a recent submission of proposed stamped plans, so Chair Hultin was prepared to move forward with a vote by designated Members on this application. Prior to the vote by designated Members, Interim Town Planner and Counsel Carboni announced that she had prepared a draft decision for this matter and which the Members reviewed. Chair Hultin identified the designated voting Members as the Chair (himself), Vice Chair Todd, Members Shedd, Townsend, and Thornley. Chair Hultin then asked for a motion to be made in the matter of **2020-007/ZBA**.

Member Shedd made a motion to grant a special permit under Section 30.7.A of the Truro Zoning Bylaw as per the findings and conditions of the ZBA's draft decision, and all stamped architectural plans and drawings.

Chair Hultin seconded the motion.

So voted, 5-0, motion carries.

After the vote, Chair Hultin announced the approval of the Special Permit as described. Mr. Zehnder thanked the ZBA Members for their time. Chair Hultin then called for a six-minute recess until 7:10 pm.

At 7:10 pm, Chair Hultin brought the meeting back to order and announced that he would like to take one item out of order due to time if there were no objections. Chair Hultin wanted to address the Board Action/Review of **2020-005/ZBA – M. Louise Briggs**. Member Shedd announced that he would recuse himself as a Member in this matter.

Board Action/Review

Chair Hultin commented that a special permit had been granted previously for **2020-005/ZBA – M. Louise Briggs**, TTE, 8 Castle Road and that there was a transcriptional error as one plan didn't reflect the correct number when it was discussed so it was necessary for a corrective measure by the ZBA. Interim Town Planner and Counsel Carboni stated that she wanted the Members to understand that due to a clerical error the proposed roof height would be 23'10", and if that was sufficiently clear at the time of the vote, a corrected decision could be issued. Chair Hultin noted that the plans clearly showed the proposed roof height as 23'10".

Vice Chair Todd made a motion to correct the clerical error.

Member Thornley seconded the motion.

So voted, 7-0, the motion carries.

After the unanimous vote, Chair Hultin announced that permit continues to be approved.

Public Hearing

2020-008/ZBA – Thomas and Dianne Didio for property located 13 Corn Hill Landing, Truro, MA (Atlas Map 45, Parcel 23, Registry of Deeds title reference: Book 19120, Page 300). Applicant seeks a Variance under M.G.L. Chapter 40A, §10 and Section 50.1(A) of the Truro Zoning Bylaw for minimum side yard setback distance. Applicant seeks a variance due to the lot shape and topography to construct sustaining walls within the setback for a conforming pool and pool house. Chair Hultin asked Mr. Zehnder to present the case. Mr. Zehnder introduced Ms. Didio and Mr. Malo. Mr. Zehnder then asked Chair Hultin to identify those Members who would vote on this matter and Chair Hultin said it would be the permanent Members who would vote. Chair Hultin identified the Chair (himself), Vice Chair Todd, and Members Dundas, Thornley, and Lucy as the designated Members. Mr. Zehnder thanked Chair Hultin and commented that the reason for the variance request is due to the shape and topography of the lot. Mr. Zehnder noted that not approving the variance request may result in hardship, financial or otherwise, to the Applicants. Chair Hultin asked Members for questions or comments, Member Lucy asked if the shed that would be removed and if it would be relocated elsewhere on the property. Mr. Zehnder said that it would not be relocated on the property. Chair Hultin commented that he could not support the request for variance as he felt that the relocation of the septic system would have been an option as to where to put the pool. Mr. Zehnder added that a hardship could be that the Applicants can't put in a swimming pool. Members expressed concern about the variance approval. Chair Hultin asked Mr. Zehnder for comment and Mr. Zehnder indicated that he will request a continuance so the Applicant may look at other design configurations for the pool.

Chair Hultin made a motion to continue this matter to February 22, 2021.

Member Lucy seconded the motion.

So voted, 5-0, the motion carries.

Chair Hultin announced the continuance of the matter to February 22, 2021, and Mr. Zehnder thanked the Members.

2020-009/ZBA – Anne Labouisse Peretz; William T. Burdick and Richard C. Vanison, Trustees, Dune House Nom. Tr. for property located at 112 North Pamet Road, Truro, MA (Atlas Map 48, Parcel 1,

Certificate of Title Number 208468, Land Ct. Lot #7, Plan #15097-H). Applicant seeks a Special Permit under M.G.L. Chapter 40A, §16 and Section 30.3(8) of the Truro Zoning Bylaw for removal and replacement of non-conforming single-family dwelling (height) on a non-conforming lot (street frontage).

2020-010/ZBA – Anne Labouisse Peretz; William T. Burdick and Richard C. Vanison, Trustees, Dune House Nom. Tr. for property located at 112 North Pamet Road, Truro, MA (Atlas Map 48, Parcel 1, Certificate of Title Number 208468, Land Ct. Lot #7, Plan #15097-H). Applicant seeks a Variance under M.G.L. Chapter 40A, §10 and Section 50.1(A) of the Truro Zoning Bylaw for removal and replacement of a single-family residential dwelling 5 feet from southerly lot line where minimum setback distance is 25 feet.

Chair Hultin asked Mr. Zehnder to begin as the Chair wanted to understand the need for a Special Permit and a Variance. Mr. Zehnder explained the reasons for the Special Permit and Variance. Mr. Zehnder further commented that the Applicants were not seeking a vote this evening as the Planning Board has requested a landscaping plan and that is being developed. Mr. Zehnder, with permission from Chair Hultin, provided additional background information about the project. Mr. Zehnder stated that the proposed new structure is a smaller structure at 2,977 gross floor square feet than the existing one at 3,167 gross floor square feet. For this size lot, a structure of 3,660 gross floor square feet is allowed by right according to Mr. Zehnder. Chair Hultin asked Members for questions or feedback and Members were in general agreement about height concerns for the structure and the structure's closeness to the setback limits. Chair Hultin noted that Mr. Zehnder was not appearing a very sympathetic ZBA this evening and Mr. Zehnder requested a continuance to February 22, 2021. Mr. Zehnder also noted that there may be people may be on the line who wanted to comment on this matter. Chair Hultin noted that due to a pending continuance that it was not necessary to hear public comment tonight, but public comment would be heard on February 22, 2021.

Member Dundas made a motion to continue this matter to February 22, 2021.

Member Lucy seconded the motion.

So voted, 7-0, motion carries.

Chair Hultin announced that this matter was continued until February 22, 2021, and Mr. Zehnder thanked the Members.

Board Action/Review

Chair Hultin led the review of the Cloverleaf Draft Comprehensive Permit and Draft Decision on Waivers. Chair Hultin noted that the ZBA had received some public comment on this topic. Interim Town Planner and Counsel Carboni updated the Members on an email that she received last night from Attorney Jay Talerman who represented the residents of Pond Village. Interim Town Planner and Counsel Carboni asked the ZBA to consider some proposed changes to the approved conditions regarding wastewater disposal. Interim Town Planner and Counsel Carboni opined that the hearing is already closed, and a decision has been rendered. Chair Hultin asked Interim Town Planner and Counsel Carboni to provide Mr. Talerman's proposed changes to the approved conditions so the Members could determine if these changes were substantive. Chair Hultin polled Members to see if they wanted to consider any changes to the conditions. Members were curious if Mr. Talerman would appeal the decision if the Members didn't adopt the proposed changes to the conditions which had previously been approved. Interim Town Planner and Counsel Carboni shared the email that Mr. Talerman sent her with the Members. Interim

Town Planner and Counsel Carboni read from the email that if the proposed changes to the conditions were approved by the ZBA that Mr. Talerma's clients would be satisfied with the decision. Chair Hultin reminded the Members that the public hearing was closed, and the application had been approved by the ZBA. Interim Town Planner and Counsel Carboni opined that she did not agree with Mr. Talerma's suggestion that there was no need for the ZBA to consider other evidence to his claims. Member Shedd asked Interim Town Planner and Counsel Carboni as to what the appeal process would look like, and she explained the process for Land Court and Superior Court. Interim Town Planner and Counsel Carboni also noted that the ZBA could reopen the public hearing to only address the proposed changes to the conditions. Chair Hultin asked Members for their input and comments. There was a consensus from the Members for the ZBA not to consider the proposed changes to the conditions and to let the ZBA's previous decision stand. Chair Hultin stated that the Members will move forward with the decision and Interim Town Planner and Counsel Carboni suggested a motion to approve the edited decision document as last viewed by email. Prior to the vote, Member Thornley dropped off the call.

Chair Hultin made a motion to approve the edited version of the decision as last viewed by email.
Member Lucy seconded the motion.
So voted, 6-0-1, motion carries.

After the unanimous vote, Interim Town Planner and Counsel Carboni stated that she would send around a letter for Members to sign for this decision to include appendices.

Chair Hultin then proposed a delay in the remaining items on this evening's agenda due to the time and Interim Town Planner and Counsel Carboni asked for date for a joint executive session with the Select Board to discuss Horton's Campground. Chair Hultin said that Monday or Thursday evenings work best at 5:30 pm. Interim Town Planner and Counsel Carboni will work on coordinating the joint executive session.

Chair Hultin made a motion to adjourn at 8:39 pm.
Member Shedd seconded the motion.
So voted, 6-0-1, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

