

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
ZBA MINUTES
MONDAY, MARCH 21, 2016
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**



QUORUM PRESENT: B. Perkel (Chmn); A. Hultin (V. Chair); F. Todd (Clerk); J. Thornley; J. Dundas (Alt). (Absent: J. Allee, N. Brown, Alt.). Also present: S. Kelly, Recording Sec.

Meeting opened at 7:02 by Chairman Perkel.

2016-001/ZBA – Gerald and Anne Woodcome by rep Pacheco Robb Arch., for property located at 27 Priest Rd., (Atlas Sheet 39, Parcel 53)(Reg. of Deeds title ref. 192627.) Applicant is seeking special Permit w/ref. to Sec. 50 §50.1 of the Zoning Bylaw to exceed bldg. height by 2 ft. 7 ½ inches, as per plans filed. Since there had been a request to withdraw the petition without prejudice, the following Motion was made:

Motion (Thornley; 2nd Todd): Move in the matter of Gerald and Anne Woodcome, for property located at 27 Priest Rd., (Atlas Sheet 39, Parcel 53) Reg. of Deeds title ref. 192627, (2016-001/ZBA) to allow the Withdrawal of the petition without prejudice.

Voted in Favor: Perkel, Hultin, Todd, Thornley, Dundas). Voted Against: None. Motion Carries: 5/0 Unanimous.

2016-002/ZBA – Stephanie Cady, for property located at 123 Shore Rd., (Atlas Sheet 32, Parcel 14)(Cert. of Title 206586, Land Ct. Lot#LCP11740V, Plan #59). Applicant is seeking a Special Permit w/ref. to Sec. 40.1 of the Truro Zoning Bylaw by bringing the limited business zone in the front of the property back to the residential zone to build a duplex, as per plans filed.

Ms. Cady was present to explain the petition; she said there is a strip of land which of 100 ft. in the Limited Business zone; the back end of the lot is in Residential; the duplex requested will be a “family compound,” and she said a new site plan had been provided. The house will be connected by a 10-ft. breezeway; the land is vacant at this time and there will be 2 houses which will both be duplexes and will meet the duplex housing provisions of the Truro Zoning Bylaw. She continued, she had been told she had to apply for a Special Permit.

Mr. Hultin explained there were no floor plans or elevations provided, and these were needed to back up her request. Ms. Cady noted she did not want to go to the architect until she had received permission and she had been told she had sufficient information to appear before the ZBA. She asked if she needed more complete plans drawn by an architect. Mr. Hultin explained the duplex looked a little vague and since the Building Commissioner was present should they ask for clarification on what would be needed. Mr. Todd noted they should be encouraging duplex construction and they want to be encouraging applicants to go forward on that aspect.

Mr. Hultin reiterated they needed plans rather than sketches and more detail is needed. Members discussed options for the applicant and since it was concluded more information was needed, Ms. Cady was asked if she wished to withdraw her application or have the hearing continued; she requested a continuation. Mr. Thornley made a Motion to Continue to April 25, 2016; 2nd by Mr. Hultin. 5/0 to continue to April 25, 2016.

2016-003/ZBA – Jennifer Cohen/Tru-Haven Association, re: 7 Parker Drive (Atlas Sheet 39-171) (Reg. of Deeds Ref: Book 12786, Page 8). Applicants are appealing the Building Commissioner’s decision to issue a bldg. permit for 7 Parker Drive.

Ms. Cohen, representing Tru-Haven Association spoke, and noted although she was happy about the conversion to residential status, she thinks the permit at issue poses concerns for abutters and sets a dangerous precedent for the town. She felt work at the property at 7 Parker Drive was in violation of the bylaw requirements; and explained about the cease and desist order from the building commissioner. She

spoke of the loophole created which allowed massive changes in violation of the bylaw – the land clearing, site changes which resulted in the height of the lot being changed. She spoke of the Planning Board action and mitigation order, the application for a change of use at the site and the plateau created. She felt there was potential danger to the road and explained they were moving the house to the cleared area to subdivide the property via the ANR process (“Approval Not Required”). She said they were asking for conditions for the building permit such as no site change; no ANR; no change to the topography; commercial use would not be allowed, no changing of use by alteration of the site. She spoke of the dirt road meeting the criteria of the bylaw under the building permit but the abutter had started changing the site. Abutter D’Amico spoke about clearing of the lots and the said no plans had been submitted therefore the request for a cease and desist. It was noted Mr. Tribuna said he was willing to do what had been asked but this was not being done. She continued, she would like to see some oversight by the town of site mitigation. Ms. Cohen explained the site plan review was actually “denied,” ie: not endorsed by the Planning Board.

Chmn. Perkel explained their argument of the case was not before the ZBA; there is the issuance of the Building Permit and the Building Commissioner has the power to issue a Building Permit. Ms. Cohen replied there should have been a Special Permit because there was an alteration of the road and she noted no one gets a building permit without the grant of a Special Permit and said Special Permit should have been required.

Mr. Todd said he was sympathetic to concerns of what had been done to the property; however he was not sure what the ZBA could do with this. Mr. Hultin asked about the Cease and Desist order from the Building Dept.; Ms. Cohen explained this was intended to stop the work at the site and allow for Site Plan Review by the Planning Board; she said precedent was created by the change of use at the site which was counteractive to the intent of the bylaw. Mr. Hultin asked about the role of the ZBA in this matter.

Mr. Hultin noted it seemed the Planning Board was out of the picture; it was still a commercial property; Ms. Cohen explained by declaration it changed from commercial to residential; however, by deed it’s a commercial site. Mr. Hultin noted it seems cutting trees is not a zoning issue and asked why Mr. Tribuna would not be able to subdivide the property. Mr. Dundas noted it seemed most of the concerns are now moot; he was not sure about the constraints requested and furthermore, he was not sure what the ZBA can do.

Mr. Perkel explained to abutter D’Amico and Ms. Cohen when the violation occurred there were steps that could have been taken. Mr. Braun was asked about the diminutions of the non-conformity and he said in his judgment there was a decrease of non-conformity of use in regard to zoning and there was no way they could not issue a building permit. He continued, residential site plan review as eliminated at Town Meeting; in response to Mr. Todd’s question on an application of change of use being normal, Mr. Braun replied in the negative and added, to effectuate a change of use in this case – ie, going from commercial to single-family use would then require a building permit which also includes zoning review.

At this point Mr. Perkel made the following Motion:

Motion: (Perkel, 2nd Hultin): Move (in ref. to 7 Parker Drive, Atlas Sheet 39 Parcel 171; ref: Reg. of Deeds title ref: book 12786, Page 8) to overturn the Building Commissioner’s decision to issue a permit.

Voted in favor of the Motion: None: Voted against the Motion: Todd, Thornley, Hultin, Dundas, Perkel.

0/5; Motion does not carry.

2016-004 – Mark Sugarman, by rep. John B. Hopkins, for property located at 1 Fourth of July Rd., (Atlas Sheet 47, Parcel 5)(Reg. of Deeds title ref: Book 20366, Page 233). Applicant is appealing the decision of the Bldg. Com. and requesting a Variance and Special Permit w/ref. to Sec. 50.1.A. (frontage), and Sec. 30.7.A. (non-conforming uses (and structures) of the Truro Zoning Bylaw for an addition/expansion of living room and bath and new deck area and screen porch area as per plans filed.

Mr. Hopkins was present to explain the petition, noting they wished to construct a small addition and there were issues with frontage. He continued, there will be an opening to the existing living space; the project is in compliance with height requirements; the addition will go from the outside wall to the chimney area which will connect to the new living space. There was a determination by the building commissioner the property did not have enough frontage to the existing road; they were not adding any additional bedrooms; the lot was created when ½ acre zoning was in place and he said the site is the 2nd road on the right after Old King's Highway. Since there were no further questions, the following Motion was made:

(Motion: Hultin, 2nd Todd): Move in the matter of Mark Sugarman, by rep. John B. Hopkins, for property located at 1 Fourth of July Rd., (Atlas Sheet 47, Parcel 5)(Reg. of Deeds title ref: Book 20366, Page 233)(2016-004/ZBA), to grant a Special Permit w/ref. to Sec. 50.1.A. (frontage), and Sec. 30.7.A. (non-conforming uses (and structures) of the Truro Zoning Bylaw in order for an addition/expansion of living room and bath and new deck area and screen porch area as per plans filed, and with plans dated Feb. 8, 2016, by John Hopkins, and w/ref. to plan numbers: A01, A02, A03, A04, A05, A06, A07 and Slade Assoc., Site Plan #2015-124, of 12/11/15. The ZBA Finds said Permit is not more detrimental to the neighborhood and is in keeping with the intent of the Truro Zoning Bylaw.

Voted in Favor: Perkel, Thornley, Dundas, Hultin, Todd. Voted Against: None. Motion Carries: 5/0 Unanimous.

2015-016/ZBA Habitat for Humanity of Cape Cod, Inc., seeks a determination of a "Change after issuance of a Permit" pursuant to 760 CMR 56.05(11) to accommodate plan changes necessitated by site conditions; and endorsement of a modified plan. Habitat received a Comprehensive Permit (Reg. of Deeds: Book 29433, Page 331) pursuant to M.G.L. Chapter 40B, Sections 20 to 23, and in accordance with 760 CMR 56.1007 for property located at 143 Route 6, Truro, Assessor's Map/Parcel 51/33-OR.

Habitat representative Leedara Zola explained when work at the site began, well testing revealed high sodium levels, and further testing determined a new well location and septic system site change were necessary. The houses remain as sited, but there is a lot line change because of the septic and well site change. The also noted they will be filtering the wells because of manganese.

The plan presented shows the new lot line and ZBA members reviewed the plan; Ms. Zola explained there is a marginal difference in the well positions near Edgewood Rd. Mr. Perkel noted there is nothing else that is open which would require a return to the ZBA. Mr. Dundas spoke of his concerns with Rte.6 access to the site; Ms. Zola explained the plans had been reviewed by the state DOT and sight lines were met and approved by DOT; Ms. Zola explained the access is as far south as possible and as close to the town land as possible.

After discussion on access Mr. Todd read the proposed Motion as follows:

Motion (Todd 2nd Perkel): Move in the matter of Habitat for Humanity of Cape Cod, Inc. the following: The Notice of Project Change to the project approved under a Comprehensive Permit for 143 Route 6, ZBA#2015-016, as submitted by Habitat for Humanity of Cape Cod to the Truro Town Clerk on March 21, 2016 represents an insubstantial change as defined under 760 CMR 56.07(5) in that:

(1) there is no change in the location, number, size, floor area, bedroom count, dimensions or type of dwelling units, and no additional waivers are required;

(2) the changes consist of revised lot lines necessary to accommodate the relocation of water and wastewater infrastructure that will meet all applicable Truro Health Regulations and the following conditions:

- a) water infrastructure will incorporate filtration to remove secondary drinking water contaminants that do not necessarily cause harm to health but are classified to cause: aesthetic (undesirable taste, odors), cosmetic (other undesirable effects which do not cause harm to body) or technical effects (effects that could damage water equipment or reduce effectiveness of treatment for other contaminants); and
- b) for any septic system that is wholly or partially located under a road or driveway, use of construction technology that provides adequate structural load bearing (e.g. H20) to the satisfaction of the Truro Board of Health and Truro Fire Department; and

(3) the written decision of this vote that also provides detail on the nature of the project changes will be executed and recorded at the registry of deeds along with an endorsed revised plan incorporating the new lot lines.

All other conditions included as part of the Comprehensive Permit remain as stated.

So voted 5-0-0; Members voting in favor: Hultin, Thornley, Dundas, Todd, Perkel.

Voted against: None.

Motion Carries 5/0 Unanimous.

Next ZBA Meeting: April 25, 2016.

Motion to adjourn: Thornley; 2nd Todd.

Meeting adjourned at 8:22 PM.

Respectfully submitted,



Susan Kelly