



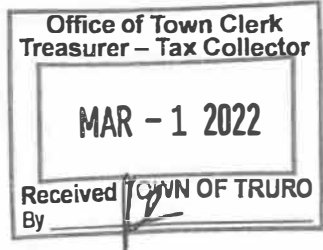
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

November 22, 2021 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



Members Present (Quorum): Art Hultin (Chair); Fred Todd (Vice Chair); Heidi Townsend; Darrell Shedd, Virginia Frazier (Alt.)

Members Absent: Chris Lucy (Clerk)

Other Participants: Barbara Carboni – Town Planner and Counsel; Ben Zehnder (Attorney for the Applicants); Thomas P. and Kathleen Dennis, Jr. (Applicants); Theresa Sprague (Botanist for the Applicants); Kevin Whitelaw (Owner of Cape Rental LLC and 127 South Pamet Road); Lauren McKean (Planner for the National Seashore)

Remote meeting convened at 5:30 pm, Monday, November 22, 2021, by 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. Town Planner and Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment.

Public Hearing

2021-006/ZBA (SP, VAR) – Cape Rental LLC and Thomas P., Jr. and Kathleen C. Dennis for property located at 127 South Pamet Road, Truro, MA (Atlas Map 48, Parcel 12; Certificate of Title Number: 222128, Land Ct. Lot #1C, Plan #16182-E and Land Ct. Lot #1D, Plan #16182-F) and 133 South Pamet Road, Truro, MA (Atlas Map 48, Parcel 8, Registry of Deeds title reference: Book 33550, Page 123). (Special Permit and Variances Applications)

Chair Hultin invited Mr. Zehnder to provide a brief summation of this matter for the benefit of the members of the public who may be watching this public hearing. Chair Hultin added that Mr. Zehnder will be provided the opportunity to provide more detailed information later. Mr. Zehnder explained, that due to coastal erosion, the Applicants want to move their dwelling on to the adjacent property through an agreement with that property owner, Mr. Whitelaw, of 127 South Pamet Road. To do this, Mr. Zehnder believed that the Applicants need a Variance from the side setback requirement as the relocation site is 38' from a roadway (South Pamet Road) and not 50' as required by the Bylaw and a Variance from the limitation of one single-family dwelling on the property. Chair Hultin asked Mr. Zehnder why there was reference to a Special Permit. Mr. Zehnder stated that he believed that it was no longer required as the current second structure on the Whitelaw property was not a dwelling.

When asked by Chair Hultin for her opinion on this matter, Town Planner and Counsel Carboni opined that she agreed with the Variance requests, but she added that a Special Permit would also be required for the relocation of the Applicants' dwelling as the Whitelaw property is less than 3 acres. Mr. Zehnder agreed with Town Planner and Counsel Carboni.

Mr. Zehnder stated that to receive relief from the Variance, the Applicants must demonstrate, under M.G.L. Chapter 40A, §10, that the Applicant would suffer hardship, financial or otherwise if the Variance was not granted. Mr. Zehnder also added that the soil conditions (ocean erosion) and topography entitles the Applicants to a Variance. Mr. Zehnder noted that not adding an additional dwelling to the neighborhood but preserving an existing single-family dwelling which will be a benefit to the Town. Mr. Zehnder stated that he hoped that the ZBA would approve the Variance requests and Special Permit.

Chair Hultin asked Members for comments and there were none. Mr. Dennis noted that the Dennis' dwelling was indeed a historical structure as it was previously Coast Guard Station #37. Mr. Whitelaw stated his support and had no concerns. Chair Hultin asked Ms. Dennis if she had anything else to add and she said that she did not.

Chair Hultin asked who had the rights to this dwelling and Mr. Zehnder said that this was like a condominium association where there are multiple residences on one lot. Mr. Zehnder added that legally, once the agreement is signed, the Applicants would have an easement right to move and maintain the house on Mr. Whitelaw's property. Additionally, the Applicant would have exclusively the right to occupy the house, share in the real estate cost of the property, pay their share of the property taxes, and pay their share for the operation of the septic system. Chair Hultin asked Mr. Zehnder what would happen to the old lot once the dwelling was relocated, and Mr. Zehnder replied that the pilings would be removed and that the lot could be used for parking until the vacant property becomes part of the beach.

Chair Hultin then opened the discussion with Members. Topics and concerns included: trenching plan for the existing septic system to the relocation site, the letter received by the ZBA from the National Park Service on this matter, ownership of Parcel #1 that goes over the property line, precedence of the permitting of a Variance by the ZBA to add a second dwelling to a property, models of erosion rates for the area, date of when the house was originally moved back on to pilings (2015), and the question was asked if the dwelling would be a year-round or seasonal home (it is a 3-season home).

Chair Hultin then asked if any members of the public had any questions or wanted to comment. Town Planner and Counsel Carboni recognized Mr. Jack Riemer who asked for evidence that all Abutters had been notified by mail regarding this matter. Town Planner and Counsel Carboni stated that the notifications went out by Town Hall as usual and there is no process to confirm receipt by each Abutter. Mr. Riemer then asked if the Truro Historical Commission (THC) had any issue with this proposal. Mr. Zehnder commented that this is a move of the structure and not an alteration so this would not fall under the purview of the THC. Mr. Riemer expressed concern if the THC had not been made aware of this proposal and Chair Hultin replied that the THC would be part of this process later.

Chair Hultin then stated that the ZBA was in receipt of a letter from the National Seashore with an opinion on this matter. Chair Hultin asked if there was a National Seashore representative on the call and Town Planner and Counsel Carboni stated that Ms. McKean was on the call. Chair Hultin expressed his dismay that the letter arrived last Friday, and he didn't receive it until today just before the meeting. The arrival of this information was past the ZBA's policy that established deadlines for submittals and Chair Hultin commented that he hoped the National Seashore would provide this information sooner in the future as it was unfair to the Applicants. Ms. McKean apologized and said that there was no deadline indicated for submission of material for today's hearing in the National Seashore's notification from Town Hall. Ms. McKean then requested to read the letter from the National Seashore District's

Superintendent Brian Carlstrom into the record. Chair Hultin agreed and Ms. McKean read the letter aloud for the record and the letter was screen shared by Town Planner and Counsel Carboni. Ms. McKean further commented if the ZBA approved this proposal it could set a negative precedence for the National Seashore and be detrimental to the neighborhood. Ms. McKean further added that the dwelling could be relocated elsewhere and cited an example when a property was moved from Truro's coastline to an interior location at Castle Hill.

Chair Hultin stated that approval in this matter was a long way away and he asked Town Planner and Counsel Carboni for an opinion should approval be granted in this matter. Town Planner and Counsel Carboni stated that the Board would not be obliged to approve another similar application should approval be granted in this matter.

Chair Hultin asked Mr. Zehnder if he would like to comment. Mr. Zehnder read the law (M.G.L. Chapter 40 §10) aloud about what constituted a "hardship". Mr. Zehnder noted that under this law "hardship" applied to the "petitioner" and didn't specify the "applicant". Chair Hultin asked for Town Planner and Counsel Carboni to seek additional legal advice as the law is written and if it has applicability in this matter. Town Planner and Counsel Carboni further stated that, in the end, the ZBA would have to decide on the requests for Variance and Special Permit independently.

Chair Hultin noted that the National Seashore District was opposed to property owners in the National Seashore District saving their homes in the event of coastal erosion activity. Chair Hultin asked Members if they thought approval of this proposal was detrimental to the neighborhood. Mr. Zehnder thanked Ms. McKean for her comments and noted that coastal erosion was going to lead to other issues such as affect roadways and utilities. Mr. Zehnder reiterated that the relocation and preservation of this dwelling was not going to be detrimental to the neighborhood. Ms. McKean replied that people had demolished their homes and removed in the past when there was no more land. Mr. Dennis commented that he appreciated what the National Seashore District does but that he didn't agree with the premise that approval of this proposal would be substantially detrimental to the neighborhood. Mr. Dennis stated that neighbors supported this proposal and deemed it to be an improvement to the neighborhood.

Vice Chair Todd noted that he saw how complicated an issue this was and that he didn't agree that this proposal would be detrimental to the neighborhood. Vice Chair Todd expressed concern over the precedence of the approval of a dwelling being moved to another property. Member Shedd reiterated his concern about the precedence of the relocation of another dwelling to another property especially after hearing Ms. McKean's comments. Member Townsend agreed with Vice Chair Todd's comments that the relocation of the house was not detrimental to the neighborhood and is curious about Town Counsel's opinion in this matter. Member Frazier agreed with Member Townsend's comments.

Chair Hultin noted that it was impressive that neighbors are supporting a neighbor's attempt to preserve their home as that is a good precedence, but he quickly noted that the ZBA had to follow existing law and Bylaws in all matters before the ZBA. Town Planner and Counsel Carboni agreed to the recommendation of a continuance in this matter and noted that the ZBA can decide to continue the hearing.

Ms. McKean thanked the Members for their consideration and encouraged the Members to look at the bay side and not only the ocean side as there were similar situations of dwellings approaching the coastal bank due to erosion.

Mr. Zehnder added that he supported the continuance to December 20, 2021, and asked Members to let him know if they have technical questions so he can have those experts present to answer questions at the upcoming meeting. Chair Hultin noted that the Site Plan was very clear. When asked, Members unanimously stated that they had no additional technical questions for the Applicants.

Chair Hultin made a motion to continue the hearing of 2021-006/ZBA to December 20, 2021.

Member Shedd seconded the motion

So voted, 5-0, motion carries.

Chair Hultin announced the continuance in the matter to December 20, 2021, and Mr. Zehnder thanked the Members before his departure. The Applicants thanked the Members and left the hearing.

Board Action/Review

Chair Hultin asked for a motion to postpone the Election of Officers until the next meeting when all Members would be present.

Member Shedd made a motion to postpone the Election of Officers to December 20, 2021.

Vice Chair Todd seconded the motion.

So voted, 5-0, motion carries.

Chair Hultin announced the approval of the motion to postpone the Election of Officers and then led the discussion and review of the 2022 meeting schedule. Member Townsend asked if there was any discussion to return to in-person hearings. Town Planner and Counsel Carboni replied that the Select Board has had initial conversations to consider hybrid meetings with the creation of a policy that outlines how hybrid meetings would be conducted.

Chair Hultin made a motion to approve the ZBA's 2022 meeting schedule as presented.

Vice Chair Todd seconded the motion.

So voted, 5-0, motion carries.

Chair Hultin announced the approval of the ZBA's 2022 meeting schedule and opened the review of the minutes from the ZBA meeting held on September 20, 2021. Members did not make any recommended edits or changes to the minutes.

Member Shedd made a motion to approve the minutes from September 20, 2021 as presented.

Chair Hultin seconded the motion and announced as Member Townsend would not vote as she was not present at that meeting.

So voted, 4-0, motion carries.

Public Comment Period

Chair Hultin asked if there were any members of the public who would like to make any comments. Town Planner and Counsel Carboni confirmed that there were no members of the public to offer comment.

Chair Hultin asked if Members had anything else to say and Town Planner and Counsel Carboni advised that any topics should be added to the next meeting's agenda. With Town Planner and Counsel Carboni's approval, Member Townsend asked an administrative question. Member Townsend asked if there would be an additional meeting with the Select Board as time had run out during the previous joint session without covering all the topics on the agenda. Town Planner and Counsel Carboni replied that she will check with the Select Board and report back to the Members.

Chair Hultin announced that the next meeting was scheduled for December 20, 2021.

Vice Chair Todd made a motion to adjourn at 6:59 pm.

Member Shedd seconded the motion.

So voted, 6-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

