



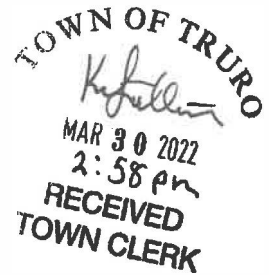
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

January 24, 2022 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



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

Members Absent: Art Hultin (Chair)

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Liz Sturdy – Truro Office Assistant; Select Board Liaison John Dundas; Ben Zehnder (Attorney for Thomas P. and Kathleen Dennis, Jr. - Applicants); Thomas P. Dennis, Jr. (Applicant); Ivan and Kevin Becica (Applicants); Victor Rivera and Laura Bergman (Applicants); Gabriela Rivera; David Bennett (Engineer for Victor Rivera and Laura Bergman – Applicants); Fred Vanderschmidt (Engineer for Victor Rivera and Laura Bergman – Applicants); Todd Schwebel (Builder for Victor Rivera and Laura Bergman – Applicants); Lauren McKean (Planner for the National Seashore District)

Remote meeting convened at 5:30 pm, Monday, January 24, 2022, 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. Members introduced themselves.

Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by Members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Vice Chair Lucy recused himself for the matter of **2021-006/ZBA (SP, VAR)** and was not present at the start of the meeting. Member Todd, as **temporary Chair**, asked if there was any member of the public who wanted to make a public comment and there were none.

Public Hearing - Continued

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/or Variance Applications) to add a second dwelling unit onto a lot from an adjacent lot.

Member Todd asked Mr. Zehnder to provide an update on this matter. Mr. Zehnder stated that there had been significant coastal erosion from the recent storm that has affected the decision as to how the Applicant wanted to proceed with the application. Mr. Zehnder added that he has submitted a written request to the ZBA to remove the request for a use variance but to keep in place the request for a dimensional variance along with a sketch. Mr. Zehnder emphasized the need for relief for the Applicant in this matter as the Truro Health and Conservation Agent Emily Beebe, with whom he has had several conversations, would grant a permit under emergency circumstances. Members and the Applicant discussed the following topics, questions, and concerns:

- Member Shedd expressed concern over the possible granting of a temporary variance in the Seashore District and setting precedence for two dwellings on one lot.
- Member Townsend asked about what was needed for the Applicant to move the dwelling back 25' away from the dune.
- Member Frazier asked if 25' away from the dune was enough distance.
- Member Todd asked Town Planner/Land Use Counsel Carboni if the ZBA could grant a temporary variance and Town Planner/Land Use Counsel Carboni opined that the ZBA didn't have authority to do so.
- Member Todd asked about the impact of the temporary relocation of the dwelling to the septic system, water, and utilities.
- Member Shedd asked about the legal impact of the removal of the dwelling's kitchen and if the dwelling would remain habitable.

Member Todd invited Ms. McKean to read aloud the email that she sent to the ZBA on behalf of the Cape Cod National Seashore (CCNS) regarding this matter. The CCNS' email expressed concerns over the request for use variance and Ms. McKean stated that Mr. Zehnder was oversimplifying the complexity of this matter. Mr. Zehnder responded that Ms. McKean asked very good questions and Mr. Zehnder expressed concern about the time lapsing quickly as the Applicant awaits a decision by the ZBA.

Member Todd opened the meeting to public comment and several residents, Mr. Robert Shapiro, and Ms. Clyde Watson, expressed procedural concerns over the ZBA deciding on a request that was altered just a couple of days ago before the public had a chance to consider it as well as the potential of three dwellings on one lot in the Seashore District.

Janet Worthington asked to be recognized and she stated that she agreed with Mr. Shapiro and Ms. Watson. All speakers said that the Applicant knew that this situation would eventually happen over time and had time to previously address the relocation of the dwelling well before now, so it is not an emergency.

Mr. Zehnder responded to these concerns and asked the ZBA to permit the Applicant to move the house back to the rear property line and staying within the existing lot. Mr. Zehnder stated that the Applicant would continue to use the home and as well as proceed with permitting for the final location which is yet to be determined.

Mr. Shapiro asked to be recognized and objected to Mr. Zehnder's request. Mr. Shapiro told the Members that the Applicant could move the house back and then resubmit a new application to properly notify abutters and abutters to the abutters to review and comment on the new application. Mr. Zehnder replied that Mr. Shapiro's interpretation of the law was not accurate, and it was not

necessary to notify Mr. Shapiro's client as the requirement, according to the Bylaw, was a notification be sent to the abutters and the abutters to the abutters within 300' of the Applicant's property. Mr. Zehnder further noted that Mr. Shapiro's client lived well more than 300' from the Applicant's property and doesn't meet the standard of the legal definition of an "*abutter to an abutter*". Mr. Zehnder also added that he didn't believe that the Zoning Bylaw allows one to move a structure to create a dimensional variance just because the home is unoccupied. Mr. Zehnder said that the current application could be amended by the Members.

Tracy Thomas asked to be recognized and expressed concern about whether or not moving the dwelling back 10' was adequate or it would require additional move back in the future. Ms. Thomas also expressed concern about the adequacy of the septic system and the environmental impact to the coastal bank to stabilize the dwelling. Mr. Zehnder asked Vice Chair Todd to ask Ms. Thomas if she is a resident of Truro and Ms. Thomas replied that she is the process of purchasing a property in Truro. Mr. Zehnder told the Members that she attempted unsuccessfully to purchase the Whitelaw property, that is now owned by the Applicant, so Mr. Zehnder asked about her motivation for the comments. Ms. Thomas replied that she was concerned as a future resident about the preservation of Cape Cod and the coastal bank before she left the meeting.

Ms. McKean asked to be recognized and stated that the Applicant can remove the house and put it on cribbage. Ms. McKean also added that she agreed with Mr. Shapiro's objections and that the ZBA didn't have to approve the application this evening.

Member Shedd asked Town Planner/Land Use Counsel Carboni if the ZBA was able to act in accordance established procedures. Town Planner/Land Use Counsel Carboni stated that there is an emergency to move the dwelling to a safe location and request relief from the ZBA. Town Planner/Land Use Counsel Carboni added that there is an emergency in this matter and suggested that there may be temporary relief from the Building Inspector. Mr. Zehnder noted that he already had approval from the Building Inspector, but he would explore that opportunity as Town Planner/Land Use Counsel Carboni suggested. Mr. Shedd asked Mr. Zehnder if he would pursue a solution to this situation bypassing the ZBA and Mr. Zehnder stated that he had to find a solution for his clients as soon as possible.

Ms. McKean asked to be recognized and then asserted that she represented an *undisclosed* Truro landowner. Ms. McKean requested for clarification for what Mr. Zehnder sought from the Building Commissioner.

Mr. Zehnder requested that Member Todd consider a motion to allow a withdrawal of the Applicant's application without prejudice in this matter. Town Planner/Land Use Counsel Carboni expressed concern that in the Building Commissioner's decision it would be necessary to explicitly determine that the relief is temporary. Town Planner/Land Use Counsel Carboni told the Members that they had a couple of options to consider:

- Grant approval of the motion to withdraw the application without prejudice
- Continue the hearing to maintain control of the application until the Members deem the Building Commissioner's temporary relief for the Applicant appropriate with a specific time established and specified "temporary relief". This would also ensure that the Applicant re-appear in front of the ZBA to continue the application process in this matter.

Member Todd and Member Shedd expressed favoring a continuance and Mr. Zehnder requested a continuance for 90 days.

Member Todd made a motion to continue the hearing of 2021-006/ZBA (SP, VAR) for 90 days to obtain relief from the Town Building Commissioner.

Member Townsend seconded the motion.

So voted, 4-0, motion carries.

Vice Chair Todd announced the continuance of **2021-006/ZBA (SP, VAR)** for 90 days, and Mr. Zehnder thanked the Members. Town Planner/Land Use Counsel Carboni will later notify the Applicant and Members of the date for the 90 days or the closest meeting to that date. Mr. Zehnder left the meeting.

Vice Chair Lucy joined the meeting prior to the start of the Public Hearing for **2021-008/ZBA**.

Public Hearing

2021-008/ZBA – Ivan and Kevin Becica for property located at 38 Longnook Road, Truro, MA (Atlas Map 43, Parcel 120, Registry of Deeds title reference: Book 33638, Page 171). Applicant seeks Special Permit under M.G.L. Chapter 40 A, §6 and §30.7 and §50.1 of the Truro Zoning Bylaws for reconstruction of a dwelling and garage on a lot nonconforming as to area.

Vice Chair Lucy identified the four Members who would vote on this application prior to the Applicants' presentation: Vice Chair Lucy, Member Todd, Member Shedd, and Member Townsend. Member Frazier will not vote but will have the opportunity to comment or ask questions.

The Applicants then provided background on their application as well as their professional engineering qualifications and licenses. Mr. Becica noted that the land area on the property was 1.06 acres and Vice Chair Lucy commented that since the property was less than 3 acres in the Seashore District the ZBA had jurisdiction.

Mr. Becica stated that they will use the existing septic system which is Title V and Vice Chair Lucy disclosed that he had inspected the system previously during the process of the property purchase by a previous buyer. Vice Chair Lucy asked if anyone if they had any questions or concerns and none were stated. Mr. Becica said that they had appeared in front of the Planning Board and the next hearing with the Planning Board will be on February 9, 2022. The Applicants provided the following information: the proposed project has a 50' setback from Old King's Highway and 25' setback from the abutter; the proposed home is a 2-bedroom structure with a full kitchen; the proposed garage is a 2-car garage, guest studio above and not an ADU; the application is not for an ADU; the total is 4-bedrooms with a septic system for 4-bedrooms; the original design was for a 2-story home but decided to make the home more aligned with the character of homes in the neighborhood, so it is now 1-story and closer to the road.

The Applicants and Members discussed the following topics, questions, and concerns:

- Member Shedd asked if the garage is intended to be a rental unit and Mr. Becica replied that the primary intent will be for family guests but if there is an opportunity to generate income the family would take advantage of that.

- Vice Chair Lucy asked about the length of the current structure along Longnook Road and Mr. Becica replied that as he recalled it was approximately 18'.
- Vice Chair Lucy asked about the length across the entire front of the proposed structure and Mr. Becica replied that it will be 43'.
- Vice Chair Lucy noted the letter from in the packet from the Health Agent that will require an updated septic system. Mr. Becica acknowledged that there has been initial dialogue with the Health Agent in this regard.
- Vice Chair Lucy asked if the Applicants' plans have been submitted yet to the Building Commissioner and Mr. Becica said they have not.

Vice Chair Lucy opened the hearing to comments from the public and there were none.

Town Planner/Land Use Counsel Carboni noted that a Planning Board's final decision must be rendered ***before*** the ZBA makes a final decision based upon her research of precedence in a similar matter.

Vice Chair Lucy asked if, as in this case, a "*pre-existing nonconforming structure*" is torn down and moved back 10' for the new structure, is the structure still considered "*pre-existing nonconforming structure*" as the structure no longer exists? Town Planner/Land Use Counsel Carboni opined the Applicants have vested rights to reconstruct a dwelling in the same place or in a more conforming fashion but not less than nonconforming fashion.

Member Todd asked Town Planner/Land Use Counsel Carboni if it was necessary to continue this hearing until after the Planning Board's next meeting and she stated that it was. A review of the Town calendar indicated that February 28, 2022, would be an appropriate date for the continuance.

Vice Chair Lucy made a motion to continue this matter to February 28, 2022.

Member Shedd seconded the motion.

So voted, 5-0, motion carries.

Vice Chair Lucy announced the continuance for **2021-008/ZBA** and thanked the Applicants for their presentation. The Applicants thanked the Members and departed.

2021-009/ZBA – Victor M. Rivera and Laura W. Bergan, Trs., The Rivera Bergan Family Trust for property located at 82 South Pamet Road, Truro, MA (Atlas Map 51, Parcel 57, Registry of Deeds title reference: Book 34393, Page 200). Applicant seeks (1) Special Permit under M.G.L. Chapter 40 A, §6 and §30.7.A of the Truro Zoning Bylaw concerning replacement of pre-existing, nonconforming dwelling and new garage on a lot nonconforming as to area; and (2) Special Permit to exceed gross floor area in the Seashore District.

Vice Chair Lucy invited Mr. Zehnder to provide background on this application as well as introduce the Applicants' team of representatives. Mr. Zehnder noted that the Applicants have already appeared in front of the Planning Board and will appear next on February 9, 2022. Mr. Zehnder said that the application has already received approval from the Conservation Commission and will be considered by the Historical Review Board on January 31, 2022, as the existing dwelling is more than seventy-five years old. The lot is 2.92 acres which is under the 3.0 acres minimum lot size and that requires a Special Permit from the ZBA. The project, at 3,857 square feet, is about 273 square feet over the "***by right***" so it requires approval. Mr. Zehnder then said that he would present and then ask for a continuance until

February 28, 2022 (after the next hearing with the Planning Board). Mr. Zehnder then presented the design and drawings from BrightBuilt Home.

The Applicants and Members discussed the following topics, questions, and concerns:

- Member Shedd asked the Applicants if a new septic system was being installed in the proposed house and Mr. Zehnder replied in the affirmative for 5 bedrooms. Member Shedd added that he was 100% supportive of this project.
- Member Townsend confirmed that the cesspool is being removed from the site and Mr. Zehnder confirmed that it would be removed.
- Member Townsend asked if the photos in the packet reflected what the property looks like currently and Mr. Zehnder confirmed that they do. Member Townsend added that she is very impressed with the BrightBuilt Home plans.
- Member Frazier had no questions but added her admiration of the BrightBuilt Home plans.
- Member Todd had no comments or questions.

Vice Chair Lucy opened the meeting to comments from the public and there were none.

Vice Chair Lucy asked Mr. Zehnder if a Landscaping Plan had been included in the application and Mr. Zehnder replied that they were, and the Landscaping Plan had been approved by the Conservation Commission. Member Shedd asked if this was the Landscaping Plan to remove invasive plants and vegetation and replace them with Cape Cod native plants and vegetation. Mr. Zehnder said that it was and then shared his screen with the Landscaping Plan with the Members and the public.

There were no additional questions from the public or Members of the ZBA.

Vice Chair Lucy made a motion to continue this matter to February 28, 2022.

Member Shedd seconded the motion.

So voted, 5-0, motion carries.

Vice Chair Lucy announced the continuance of **2021-009/ZBA**, and Mr. Zehnder thanked the Members. The Applicants and their representatives departed the meeting.

Approval of Minutes

Town Planner/Land Use Counsel Carboni asked Vice Chair Lucy to review, edit if necessary, and approve the minutes on tonight's agenda.

Members reviewed the minutes for December 14, 2020, and there were no corrections or edits.

Vice Chair Lucy made a motion to approve the minutes for December 14, 2020, as presented.

Member Shedd seconded the motion.

So voted, 4-0-1, motion carries.

Members reviewed the minutes for January 25, 2021, and there were no corrections or edits.

Member Todd made a motion to approve the minutes for January 25, 2021, as presented.
Member Shedd seconded the motion.
So voted, 4-0-1, motion carries.

Members reviewed the minutes for February 22, 2021, and there were no corrections or edits.

Member Todd made a motion to approve the minutes for February 22, 2021, as presented.
Member Shedd seconded the motion.
So voted, 4-0-1, motion carries.

Prior to the vote on the minutes for March 22, 2021, Vice Chair Lucy noted that only two members tonight were present at that meeting and Town Planner/Land Counsel Carboni opined that the Members could vote under the Rule of Necessity. Members reviewed the minutes for March 22, 2021, and there were no corrections or edits.

Vice Chair Lucy made a motion to approve the minutes for March 22, 2021, as presented.
Member Shedd seconded the motion.
So voted, 2-0-3, motion carries.

Members reviewed the minutes for April 26, 2021, and there were no corrections or edits.

Member Todd made a motion to approve the minutes for April 26, 2021, as presented.
Member Shedd seconded the motion.
So voted, 4-0-1, motion carries.

Members reviewed the minutes for May 24, 2021, and there were no corrections or edits.

Member Shedd made a motion to approve the minutes for May 24, 2021, as presented.
Member Todd seconded the motion.
So voted, 3-0-2, motion carries.

Town Planner/Land Use Counsel Carboni thanked the Members for their approval of the minutes.

Vice Chair Lucy announced the next meeting on February 28, 2022. Vice Chair Lucy asked if any Members wanted to add anything to the next meeting's agenda and there were none.

Vice Chair Lucy made a motion to adjourn at 7:45 pm.
Member Shedd seconded the motion.
So voted, 5-0, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

