



TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

August 21, 2023 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

TOWN OF TRURO

DEC 08 2023

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Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Art Hultin; Heidi Townsend; Nancy Medoff; Dave Crocker (Alt.); Joseph McKinnon (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Robert Weinstein-Select Board Liaison; William Henchy-Attorney for Robert J. Martin II (Applicant); Ben Zehnder-Attorney for Bruce Jacobson-Trustee (Applicant); Bruce Jacobson-Trustee (Applicant); Katherine Rowe (Applicant); Kimberly Chester (Applicant); Alan Cabral-Designer for Kimberly Chester (Applicant); Charles Silva (Applicant); Leif Hamnquist-Architect for Charles Silva (Applicant); Brian Carlstrom-Superintendent of the Cape Cod National Seashore; Patricia Callinan (Truro Voter)

Remote meeting convened at 5:30 pm, Monday, August 21, 2023, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and Chair Lucy recognized Attorney Henchy who apologized to the Members and Mr. Martin but stated that he had a veterinary emergency at his home and had to depart the meeting to take a family pet to the animal emergency hospital immediately.

There were no other public comments made.

Minutes

None

Public Hearings (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks a Variance under M.G.L. Ch. 40A § 10 and §40.3.B.2/§30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 9); Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three nonconforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy announced that the Applicant had requested a continuance until September 25, 2023.

Chair Lucy made a motion to continue the matter of 2022-017/ZBA until September 25, 2023.

Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

Vice Chair Shedd – Aye

Chair Lucy – Aye

Member Crocker - Aye

Member McKinnon – Aye

Member Hultin - Aye

So voted, 7-0, motion carries.

2023-004/ZBA (SPs) - Truro Atlantic View Realty Trust, Bruce A. Jacobson, Trustee for property located at 12 Ocean Bluff Lane (Atlas Map 37, Parcel 6). Applicant seeks: (1) Special Permit to approve construction on non-conforming lot, including (completed) construction unauthorized by earlier permit, and additional square footage; and (2) Special Permit to exceed Gross Floor Area in Seashore District.

Chair Lucy recognized Attorney Zehnder who introduced the Applicant and provided background information on the project. Attorney Zehnder also noted that he could not obtain either an engineer or architect stamp for the plans from the previous owner as no one would validate prior work and calculations. Attorney Zehnder reviewed a historical timeline and photographs of the properties abutting the Applicant's property.

Following the presentation, Members discussed the following highlighted topics: interior space, potential encroachment of another owner's property, obtaining the opinion from the National Seashore regarding this project, the proposed driveway, and potential limiting the incremental expansion in the future created as a condition for approval.

Attorney Zehnder asked Superintendent Carlstrom if he would like to opine on the project and Superintendent Carlstrom noted that the change and massing is consistent with other properties in the area but the proposed project is a significant change to the historical structure.

After a lengthy discussion regarding the proposed changes, Chair Lucy asked if any member of the public would like to comment and there were none.

Chair Lucy made a motion to continue the matter of 2023-004/ZBA to September 25, 2023.

Vice Chair Shedd seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

Vice Chair Shedd – Aye

Chair Lucy – Aye

Member Crocker - Aye

Member McKinnon - Aye

Member Hultin - Aye

So voted, 7-0, motion carries.



2023-006/ZBA Robert J. Martin II and 100 Route 6 LLC for property located at 100 Route 6 (Atlas Map 55, Parcel 12). Applicant appeals a cease-and-desist order issued by Building Commissioner on May 3, 2023, with respect to property located in the Seashore District.

As previously requested during the Public Comments portion of this meeting, Attorney Henchy's request for a continuance in the matter of **2023-006/ZBA** was met without opposition from the Members.

Chair Lucy made a motion to continue the matter of 2023-006/ZBA until September 25, 2023.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

Vice Chair Shedd – Aye

Chair Lucy – Aye

Member Crocker - Aye

Member McKinnon – Aye

Member Hultin - Aye

So voted, 7-0, motion carries.

Public Hearing (New)

Prior to the opening of the new public hearings, Chair Lucy recused himself from the first hearing due to conflict of interest and Vice Chair Shedd led the matter of **2023-007/ZBA**.

2023-007/ZBA - Kimberly Bell Chester for property located at 38 Fisher Road (Atlas Map 53, Parcel 35). Applicant seeks a Special Permit to construct a second story on existing dwelling on nonconforming lot (lot area and frontage; front, side, and rear setbacks) in Residential District.

Vice Chair Shedd recognized Ms. Chester who introduced Mr. Cabral and provided background information on the project.

Members discussed with Ms. Chester and Mr. Cabral the determination of the structure's height. Town Planner/Land Use Counsel Carboni noted that a building that doesn't have a ridge will have a maximum height that does not exceed 23' and asked if the Members wanted to discuss whether this note applied to this project.

Vice Chair Shedd made a motion to grant a Special Permit in the matter of 2023-007/ZBA.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

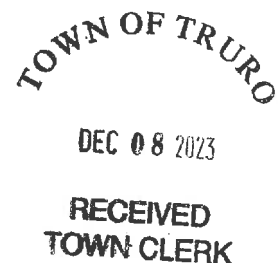
Vice Chair Shedd – Aye

Member Crocker - Aye

Member McKinnon – Aye

Member Hultin - Aye

So voted, 6-0, motion carries.



2023-008/ZBA - Charles Silva for property located at 379 Shore Road (Atlas Map 10, Parcel 10). Applicant seeks a Special Permit to construct a two-story dwelling replacing a 1½ story dwelling on nonconforming lot (lot area and frontage; front setback, side setback, and two dwellings on lot) in the Beach Point Limited Business District.

Chair Lucy recognized Mr. Silva who provided background information on the project.

Members discussed with Mr. Silva the proposed new upper-level deck.

Vice Chair Shedd stated that he was not opposed to the project but that it seemed that the ZBA was being asked more frequently to skirt the intent of the Bylaw. Vice Chair Shedd cautioned that future similar projects may not be approved as the Members have to enforce the intent of the Bylaw.

After Vice Chair Shedd's comments, a more detailed conversation occurred among the other Members and Town Planner/Land Use Counsel Carboni regarding the ZBA's discretion in making decisions.

Chair Lucy asked if anyone of the public had a question regarding this project, and Chair Lucy recognized Ms. Callinan. Ms. Callinan asked what the height of the completed structure would be and Mr. Silva replied that he did not know but it would be under the maximum allowable height in accordance with the Bylaw.

Mr. Hamnquist joined the conversation and explained the average grade determination and expressed concerns that Members would consider conditions for approval of this project. Town Planner/Land Use Counsel Carboni noted that the ZBA had the authority to condition any approved projects.

Members then discussed adding a condition to this project by requiring the Applicant to provide a certified elevation according to the plans.

Chair Lucy announced that the full Members would vote on this matter.

Member Townsend made a motion to grant a Special Permit in the matter of 2023-008/ZBA with conditions related to the height of the building.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

Vice Chair Shedd – Nay

Chair Lucy - Aye

Member Hultin - Nay

So voted, 3-2, motion does not carry.

After the vote, Members expressed what they would like the Applicant to change. Mr. Silva expressed his disappointment with the decision, but he will review the plans and resubmit. Mr. Silva thanked the Members and departed.

Board Action: None

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Topics of Discussion

Chair Lucy led the discussion of Special Permit language and requirements with the Members and Town Planner/Land Use Counsel Carboni. Highlighted topics included: criteria for Special Permit, criteria to exceed gross floor area in the Seashore District and the Residential District, the status of the Planning Board's consideration to amend the provision of the Bylaw that permits exceeding gross floor area and present it at Town Meeting (Planning Board ultimately decided not to add it to the Warrant and therefore did not present it at Town Meeting), reviewed the intent of the Bylaw and how it can be interpreted with more clarity, and the ZBA's authority to interpret the Bylaw as it sees fit.

Chair Lucy led the discussion of enforcement with the Members and stated that it is necessary to step up enforcement efforts of the Bylaws. Members discussed Applicants who do not build according to an approved Special Permit and then asking for forgiveness after the fact, the possible need to hire another building inspector or making the building inspector a full-time role, the suggestion that the Select Board create an enforcement officer role whose responsibility to investigates all complaints (Planning Board, ZBA, Health & Conservation), and the process to request the Building Commissioner enforce the Bylaw.

Future Topics of Discussion

Chair Lucy noted that he would like to continue the discussion on enforcement of zoning issues for the next meeting's agenda.

Town Planner/Land Use Counsel Carboni suggested that the Building Commissioner present to the ZBA and explain how height is measured and how the average grade is determined.

Chair Lucy also would like to request that the Building Commissioner attend the next meeting to update the Members on the cease-and-desist order for the matter of **2023-006/ZBA**. Town Planner/Land Use Counsel Carboni will investigate that possibility.

Members discussed the possibility of "in-person" meetings and Town Planner/Land Use Counsel Carboni will review the current guidance as well as the guidance for hybrid meetings.

Chair Lucy announced that the next ZBA meeting will be held on September 25, 2023, at 5:30 pm.

Vice Chair Shedd made a motion to adjourn at 7:51 pm.

Member Crocker seconded the motion.

ROLL CALL VOTE:

Member Townsend - Aye

Member Medoff – Aye

Vice Chair Shedd – Aye

Chair Lucy – Aye

Member Crocker - Aye

Member McKinnon – Aye

Member Hultin - Aye

So voted, 7-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

