

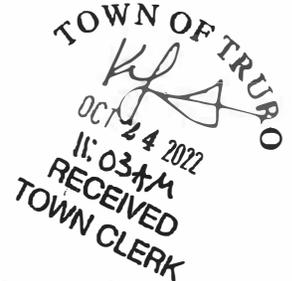


Truro Planning Board Agenda

Remote Public Meeting – Work Session

Wednesday, October 26, 2022 – 5:00 pm

www.truro-ma.gov



Open Meeting

Remote Meeting Access Instructions: Citizens can join the meeting to listen by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at [1-877-309-2073](tel:1-877-309-2073) and entering the access code [412-834-437#](tel:412-834-437#) when prompted. Citizens will be muted upon entering the meeting.

Meeting link: <https://meet.goto.com/412834437>

Minutes:

- ◆ Assignment of Today's Minutes
- ◆ Approval of Minutes: September 21, 2022
- ◆ Outstanding Minutes: None

1. Street Definition
2. Duplex Bylaw

Next Work Session – Discussion

Next Meeting – Wednesday, November 2, 2022 at 5:00 pm

Adjourn



TOWN OF TRURO

PLANNING BOARD

Meeting Minutes

September 21, 2022 – 5:00 pm

REMOTE PLANNING BOARD MEETING

Members Present (Quorum): Anne Greenbaum (Chair); Rich Roberts (Vice Chair); Jack Riemer (Clerk); Paul Kiernan; Ellery Althaus; Caitlin Townsend

Members Absent:

Other Participants: Town Planner/Land Use Counsel Barbara Carboni; Select Board Liaison John Dundas; Regan McCarthy (Applicant); Christopher Senie (Attorney for Regan McCarthy – Applicant); Victoria Dalmas (Attorney for Regan McCarthy – Applicant); Kieran Healy (BSC Group and Surveyor for Regan McCarthy – Applicant); Lauren McKean (Cape Cod National Seashore Planner); Timothy Greene (TerraSearch, LLC and Representative for Crown Castle – Applicant); R. Bruce Boleyn (Former Member of the Planning Board).

Remote meeting convened at 5:03 pm, Wednesday, September 21, 2022, by Chair Greenbaum who announced that this was a remote public meeting aired live on Truro TV Channel 18 and was being recorded. Town Planner/Land Use Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment. Members introduced themselves to the public.

Chair Greenbaum announced that Bruce Boleyn has decided to resign from the Planning Board. Members expressed their appreciation for his service to Truro and noted his civility and respect to all.

Public Comment Period

Public comment, for items not on the agenda, was opened by Chair Greenbaum and there were none.

Planner Report

Town Planner/Land Use Counsel Carboni reported that the Open Space Committee had its first meeting with Jeff Thibodeau (consultant) and the process to update the Town's Open Space and Recreation Plan has started with an anticipated completion date in February 2023. The Local Comprehensive Plan Committee will have an event on Saturday, October 15th from 10 am to 12 pm. The event will be facilitated by the committee's consultants, and all are invited.

Chair Report

Chair Greenbaum recognized Member Althaus who is on an ad hoc group to discuss the Town's to increase the diversity in housing stock in Town. Member Althaus provided a brief update on the first couple of meetings and how decisions made by the Town of Wellfleet regarding undersized lots and cottage colonies may be applicable in Truro.

Board Action/Review

2022-009/SPR - Crown Castle, on property located at 344 Route 6 (Atlas Map 39, Parcel 172). Applicant seeks a Special Permit under Section 40.5 of the Truro Zoning Bylaw, and as an Eligible Facilities Request for a minor modification under Section 64091 and the rules of the Federal Communications Commission ("FCC"), to modify an existing tower: remove or replace antennas, ancillary equipment, and ground equipment as per plans for an existing carrier on an existing wireless communication facility; and replace equipment on existing concrete pad. Such modification will not substantially change the physical dimensions of such tower or base station. The modification does not constitute a substantial change to the existing tower under 47 C.F.R. §1.6100.

Chair Greenbaum asked Town Planner/Land Use Counsel Carboni to summarize what occurred at the previous Planning Board meeting and she summarized that no one knew if there was emergency equipment on the tower and that the risk level category should be "3" and not "2". Mr. Greene concurred with the summarization by Town Planner/Land Use Counsel Carboni. Mr. Greene reported that the Planning Board's requested report from the last meeting was incomplete and so he recommended either a continuance until the next Planning Board meeting or approve the application with conditions. Town Planner/Land Use Counsel Carboni opined that either option was acceptable.

Member Kiernan made a motion to continue 2022-009/SPR until October 12, 2022.

Vice Chair Roberts seconded the motion.

So voted, 6-0, motion carries.

2022-005/PB - Regan McCarthy seeks approval of Form A- Application for Determination that Plan Does Not Require Approval (ANR) pursuant to Section 2.2 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 35A Higgins Hollow Road, Truro MA, Atlas Map 47, Parcel 2, Registry of Deeds title reference: Book 20807, Page 42.

Chair Greenbaum announced that she is a friend of the Applicant, but she had filed a Disclosure of Appearance of Conflict-of-Interest form. Chair Greenbaum stated that she can be fair and impartial in her decision and that her form is on file at the Town of Clerk's office. Vice Chair Roberts disclosed that the Applicant's attorney, Attorney Senie, is a high school classmate of his and Vice Chair Roberts will not recuse himself from this matter. Member Kiernan stated that he has known the Applicant for a long time.

Chair Greenbaum recognized Attorney Senie who introduced the Applicant's team and then provided detailed background on the application and its purpose. Attorney Senie asked that later in the presentation that the Applicant be allowed to show a 1-minute video of the dirt path extension that has existed for over fifty years. Attorney Senie stated that this is a new application so a new vote will be required by the Planning Board but that the Planning Board should not reach a new conclusion.

Chair Greenbaum asked Town Planner/Land Use Counsel Carboni to review the three questions which the Members must consider endorsing this application. Town Planner/Land Use Counsel Carboni reviewed the three questions:

1. Is there sufficient frontage on what is proposed as the way?
2. Was the way in existence as of 1955?
3. Does this way have sufficient width, suitable grades, and adequate construction for traffic?

Town Planner/Land Use Counsel Carboni further stated that if the answer to any of those question is “no”, the Planning Board can’t endorse the ANR. Chair Greenbaum noted that this is a complicated matter and that there are two new Members of the Planning Board who may have questions.

Chair Greenbaum recognized Mr. Healy who provided surveying data and responded to the three questions in the affirmative. Members discussed the following topics: the accuracy of the perimeter as indicated on the plan (Mr. Healy replied that it was accurate that that he had stamped the plan) and a more recent Land Court ruling that indicates a different perimeter (Mr. Healy stated that he was not aware of this ruling).

Chair Greenbaum recognized Ms. McCarthy who provided additional information about the Land Court ruling and stated that the plans were accurate. Due to technical issues, Ms. McCarthy was unable to present her 1-minute video of the dirt path extension, so she described what was on the video. A discussion then ensued regarding the three questions which must be considered among Members and Town Planner/Land Use Counsel Carboni.

Chair Greenbaum recognized Ms. McKean who stated that there are no legal rights for a driveway or road use for the McCarthy parcel and cited a Cape Cod National Seashore (CCNS) letter, signed by CCNS Superintendent Brian Carlstrom, and dated September 21, 2022, that stated that only utilities could use the dirt path extension. Attorney Senie stated that he was surprised by Superintendent Carlstrom’s letter and that he would welcome a conversation between CCNS Superintendent Carlstrom and Ms. McKean to discuss this matter further to grant Ms. McCarthy access. Ms. McKean reviewed the CCNS’ letter with the Members and the Applicant.

Town Planner/Land Use Counsel Carboni opined that the Planning Board can go no further until the Applicant and CCNS come to an agreement. Attorney Senie asked for a continuance until the next Planning Board meeting so the Members can view Ms. McCarthy’s 1-minute video and the Applicant can meet with the CCNS. Town Planner/Land Use Counsel Carboni opined that the Planning Board could vote on this matter tonight or continue until the next Planning Board meeting. Attorney Senie stated for the record that he wished to continue this matter until October 12, 2022.

Member Kiernan made a motion not to vote on 2022-005/PB tonight and to have a further discussion on October 12, 2022.

Vice Chair Roberts seconded the motion.

So voted, 6-0, motion carries.

Minutes

Chair Greenbaum led the review of the meeting minutes for August 24, 2022, for edits and corrections. Chair Greenbaum said that the reference to a Special Permit should be changed to a Site Plan Review. Member Kiernan did not vote on these minutes as he was not in attendance for the meeting.

Member Riemer made a motion to approve the minutes as amended.

Member Townsend seconded the motion.

So voted, 5-0-1, motion carries.

Chair Greenbaum led the review of the meeting minutes for May 26, 2021, for edits and corrections and noted that Members Althaus and Townsend would not vote on the following minutes as they were not yet elected to the Planning Board.

Member Riemer made a motion to approve the minutes as written.

Member Kiernan seconded the motion.

So voted, 4-0, motion carries.

Chair Greenbaum led the review of the meeting minutes for April 7, 2021, for edits and corrections. Member Kiernan did not vote as he was not present at that meeting.

Member Riemer made a motion to approve the minutes as written.

Chair Greenbaum seconded the motion.

So voted, 3-0, motion carries.

Chair Greenbaum recognized Mr. Boleyn who announced his resignation from the Planning Board effective immediately for health reasons. Mr. Boleyn expressed gratitude for Chair Greenbaum's leadership and thanked the Members for their support over the last ten years. Town Planner/Land Use Counsel Carboni and the Members thanked Mr. Boleyn for all his work and noted that his presence on the Planning Board will be greatly missed.

Chair Greenbaum announced that the next Planning Board work session will be on September 28, 2022, at 5:00 pm and the next Planning Board meeting will be on Wednesday, October 12, 2022, at 5pm.

Member Riemer made a motion to adjourn the meeting at 7:16 pm.

Member Kiernan seconded the motion.

So voted, 6-0, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

Truro Article 23 from 2015 Warrant:

10.4 Definitions

Street, A private or public way by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations. For the purposes of this bylaw, the terms “street”, “road” and “way” bear the same meaning.

New Section 30.11 Streets and Frontage

- A. Purpose: It is the intent of this section to provide the minimum requirements for streets in Truro in order to qualify as safe and adequate for the purposes of obtaining a building permit from the Building Commissioner on an existing private road.
- B. Applicability: A Street is assumed to qualify as safe and adequate and can be developed by right provided the following is met:
 - 1. A public way which the Town Clerk certifies is maintained and used as a public way; or,
 - 2. A way that has been approved, endorsed and constructed in accordance with the subdivision control law, or
 - 3. A way that was in existence on December 8, 1955 and meets the following minimum criteria:

| | | | | |
|-------------------------|---|---------|---------|------------|
| Number of Lots on Road | 1-5 | 6-10 | 11-20 | 21 or more |
| Minimum Roadway Width | 8 feet, plus 3 feet clearance on both sides | 14 feet | 16 feet | 18 feet |
| Maximum Allowable Grade | 12% | 10% | 8% | 8% |

For ways that do not meet these minimum requirements, the Planning Board, in conformance with subparagraph C, shall make a determination as to whether said road provides safe and adequate access.

- C. The Planning Board shall make a determination of the adequacy of a street as outlined below:
 - 1. Public Hearing – Upon the filing of a request with the Planning Board, the Board shall hold a duly noticed public hearing within forty-five (45) days. Notice shall be made no less than fourteen (14) days prior to the scheduled public hearing via regular first class mail to all the owners of properties along said street.
 - 2. The request can be for a determination of the entire length of street or a determination of the street up to and including a lot located on said street.
 - 3. Referral – Upon the filing of a request and prior to the public hearing said request shall be referred to the Police and Fire Departments and the Department of Public Works for review and comment.
 - 4. Requirements – The applicant shall show to the satisfaction of the Planning Board that the street has sufficient width, suitable grades and adequate construction to provide access for emergency vehicles as well as safe travel and adequate circulation. The Planning Board may refer to and may utilize existing road standards as outlined in the Town of Truro Rules and Regulations Governing the Subdivision of Land (as amended) and the Town of Truro General Bylaws (as amended).
 - 5. The Planning Board’s Decision on the determination of adequacy of the street shall be filed with the Town Clerk. Any appeal from that decision must be commenced within sixty

(60) days from the date of filing with the Town Clerk under the provisions of Massachusetts General Laws Chapter 249, Section 4.

(End of 2015 article)

Issues we may want to address to update the above article for resubmission to the 2023 Town Warrant:

1. ROW for any approved street should have a defined, closed, "surveyable" boundary. Whether it actually needs to be surveyed in the field should be discussed by the PB – do we want this to be a condition?
2. Strengthen the language pertaining to 3. above requiring input from Police, Fire and possibly DPW to make their approval a requirement for approval, additional to the PB approval.

Article 23 from 2015 ATM Warrant

**ARTICLE 23: ZONING AMENDMENT – DEFINITION OF STREET & NEW §30.11
STREETS AND FRONTAGE**

To see if the Town will vote to amend the Truro Zoning Bylaw Section 10.4 by deleting the definition of “Street” and replacing it with the following:

Street. A private or public way by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations. For the purposes of this bylaw, the terms “street”, “road” and “way” bear the same meaning.

And further, to amend Section 30 Use Regulations by adding a new Section 30.11 Streets and Frontage as follows:

“Section 30.11 Streets and Frontage

Article 23 from 2015 ATM Warrant (cont.)

- A. Purpose: It is the intent of this section to provide the minimum requirements for streets in Truro in order to qualify as safe and adequate for the purposes of obtaining a building permit from the Building Commissioner on an existing private road.
- B. Applicability: A Street is assumed to qualify as safe and adequate and can be developed by right provided the following is met:
 - 1. a public way which the Town Clerk certifies is maintained and used as a public way; or,
 - 2. a way that has been approved, endorsed and constructed in accordance with the subdivision control law; or
 - 3. a way that was in existence on December 8, 1955 and meets the following minimum criteria:

| | | | | |
|-------------------------|---|---------|---------|------------|
| Number of lots on Road | 1 - 5 | 6 - 10 | 11 - 20 | 21 or more |
| Minimum Roadway Width | 8 feet, plus 3 feet clearance on both sides | 14 feet | 16 feet | 18 feet |
| Maximum Allowable Grade | 12 % | 10 % | 8 % | 8 % |

For ways which do not meet these minimum requirements, the Planning Board, in conformance with subparagraph C, shall make a determination as to whether said road provides safe and adequate access.

- C. The Planning Board shall make a determination of the adequacy of a street as outlined below:
 - 1. Public Hearing – Upon the filing of a request with the Planning Board, the Board shall hold a duly noticed public hearing within forty-five (45) days. Notice shall be made no less than fourteen (14) days prior to the scheduled public hearing via regular first class mail to all the owners of properties along said street.
 - 2. The request can be for a determination of the entire length of street or a determination of the street up to and including a lot located on said street.
 - 3. Referral – Upon the filing of a request and prior to the public hearing said request shall be referred to the Police and Fire Departments and the Department of Public Works for review and comment.
 - 4. Requirements – The applicant shall show to the satisfaction of the Planning Board that the street has sufficient width, suitable grades and adequate construction to provide access for emergency vehicles as well as safe travel and adequate circulation. The Planning Board may refer to and may utilize existing road standards as outlined in the Town of Truro Rules and Regulations Governing the Subdivision of Land (as amended) and the Town of Truro General Bylaws (as amended).
 - 5. The Planning Board’s Decision on the determination of adequacy of the street shall be filed with the Town Clerk. Any appeal from that decision must be commenced within sixty (60) days from the date of filing with the Town Clerk under the provisions of Massachusetts General Laws Chapter 249, Section 4.”

Or to take any other action relative thereto. ***Requested by the Planning Board***

Article 23 from 2015 ATM Warrant (cont.)

Board of Selectmen Recommendation: 1 in favor, 4 opposed
Planning Board Recommendation: 6-0 in favor

Comment: The current definition of street needs to be updated. It currently reads in part that "When a street(s) is to be used for lot frontage, the street(s) shall conform to the requirements of the Town of Truro Subdivision Regulations, Section IV - Design Standards (b), (c), & (d) as they existed on January 1, 1989." Although the current definition contains an exception for certain "accepted public paved ways," the majority of streets in Truro are not paved and most of them have never been accepted. The design standards in existence on January 1, 1989 required that "The minimum width of street right-of-ways shall be 40 feet." Also, the references are outdated as the Subdivision Regulations have been rewritten. The Planning Board submits that the requirement of a 40 foot right-of-way is unduly restrictive.

At the 2013 ATM the Planning Board proposed a new Street definition and additional language. At that time the article did not receive the required 2/3 vote and the message that was heard was that the proposed language in 2013 did not contain standards or requirements and there was a concern with phrase "in the opinion of the Planning Board".

The new proposed language presents a simple and straight forward definition of "Street". In addition, the new proposed Section 30.11 provides for minimum requirements (consistent with both the Town General Bylaw regarding Public Safety and with the Subdivision Rules and Regulations.) This section also provides for additional review if those requirements are not met.

Truro Planning Board

Definition of “Street” in the Truro Zoning Bylaws

Executive Summary – October 3, 2022

Problem: The Truro Planning Board is looking to revise the definition of street in the Truro Zoning Bylaws because the current definition results in a number of roadways (approximately 160) not meeting the definition of street. As a result, the Town’s Building Commissioner is required to withhold building permits to lot owners whose properties front on these ways. The lot owners must then apply to the Zoning Board of Appeals for a variance in order to develop their property. This arrangement is burdensome to the Building Commissioner, the ZBA and the property owners.

Current Condition: Truro’s current Zoning Bylaws presently provide 3 means by which a “way” or “road” can be classified as a “Street” (§10.4 Definitions), thereby satisfying one important prerequisite that would make lots on that Street potentially developable house lots.

- Roads that are accepted public paved ways and are already recognized as such by the town.
- Roads that are part of a subdivision approved previously by the town’s Planning Board and recorded and constructed in accordance with the town’s Subdivision Regulations.

There is presently no issue or debate with regard to either of these first two means of defining a “Street” and therefore no major revisions are being considered with respect to the above two methods.

The focus of this current work is the third means by which a road or way can be accepted as a Street. Per the current zoning bylaws, to be classified as a Street, a road or way must meet each of the following criteria:

- (b) the minimum width of street right-of-ways shall be 40 feet.
- (c) Property lines at street intersections shall be rounded to provide for a curb radius of not less than 20 feet.
- (d) Dead end streets shall be provided at the closed end with a turnaround having a property line diameter of at least 80 feet.
- Additionally, streets must be a minimum of 100 feet long.

The first three bullets above, referred to as (b), (c) and (d), are presently included in the current zoning bylaws by a reference to Truro Subdivision Regulations that were superseded in 1989. Note that all four of the bulleted items above are geometric criteria which must be satisfied in order for the way to be deemed a Street.

The Issue: This third means of defining a Street has proved to be difficult to satisfy. At present, Truro has over 160 ways that fail to meet this standard. The majority of these disqualified roads are unpaved, dead-end rural ways that predate the Town’s adoption of its initial Zoning Bylaws. Because these ways do not meet the criteria to be classified as Streets, adjacent property owners do not have the frontage on a defined Street that would grant them “by right” status to develop their property. Therefore, the Building Commission cannot issue a building permit and property owner must apply to the Zoning Board of Appeals for a variance in order to develop their property. This arrangement is burdensome to the Building Commissioner, the ZBA and the property owners.

Previous Efforts: Similar efforts to revise this definition were presented to Town Meeting in 2013, 2015 and 2016, and the Planning Board withdrew yet another article seeking to revise this definition from the 2022 warrant.

The 2016 and 2022 warrant articles were similar in that the proposed revisions were largely a matter of “housekeeping”, by which the (b), (c) and (d) geometric criteria taken from the pre-1989 Subdivision Regulations would be edited directly into the revised definition of Street. This proposal is a minimum-change approach to revising the definition. There are many other pertinent geometric roadway parameters that are not included in this present definition. This definition includes only 4 relevant geometric criteria, and this approach is referred to in this document as a “Partial Quantitative Approach”.

The 2013 warrant article removed the (b), (c) and (d) geometric criteria entirely, relying instead on the Planning Board to judge whether the “way” was acceptable as a Street. This change would have provided for a “way” to be classified as a Street by a majority vote of the Planning Board. That article reportedly failed at Town Meeting for two reasons:

1. Voters apparently felt that the proposed new definition lacked criteria (e.g., geometric requirements).
2. Concern that ways could be approved as Streets by requiring only four (4) affirmative votes from Planning Board members, some of whom may lack the relevant expertise or experience to make that determination.

Because this approach lacks geometric criteria and relies instead solely on the judgement of the Planning Board, this approach is referred to here as the “Qualitative Approach”. Other towns – including Wellfleet, Sandwich, Brewster and Harwich – all define “Street” using a similar Qualitative Approach. Massachusetts General Laws Chapter 41, Section 81L uses similar qualitative language to define a Street in the definition of “Subdivision” contained therein.

The 2015 warrant article, apparently written in response to the concerns expressed in 2013, provided two alternative methods by which the “ways” in question could potentially satisfy the definition of Street. The first method utilized a more extensive Quantitative approach, including a table of geometric parameters against which the suitability of the roadway could be measured. The second method was based on a Qualitative approach that required approval by the Planning Board following a Public Hearing and a review by the town’s Police, Fire and Public Works officials. This warrant article also failed at Town Meeting.

The Work Now: The Planning Board is seeking to develop an article for the 2023 warrant that would provide a revised definition of “Street” that would reduce the number of “ways” presently disqualified as Streets and thus reduce the administrative burden on lot owners, town officials and town boards. A revised Street definition must also continue to serve as a safeguard to ensure that the practical and functional requirements for street frontage are satisfied in all cases.

After reviewing the history of efforts to date, the 2015 warrant article – which was defeated – would appear to represent the most comprehensive effort to date, as it included both Qualitative and Quantitative solutions. The Planning Board proposes to begin our work on this issue by reviewing the reasons why the 2015 article failed at Town Meeting. A revised version of that 2015 article may lead to an updated Street definition article that would be acceptable to the 2023 ATM voters.

POSSIBLE REVISION TO DUPLEX BYLAW 1.26.22

§ 40.1 Duplex Houses and Apartments

- A. Purpose. For the purpose of promoting the more efficient use of land, in keeping with the protection of the quality of life and ecology, and at the same time giving relief to those with problems of obtaining adequate housing, the Board of Appeals (or Planning Board?) may approve a special permit authorizing the new construction of duplex houses or the conversion of single family dwellings to apartments, consistent with the following conditions.
- B. These structure, either new or conversion, are allowed in all districts except: Beach Point and Seashore District.
- C. New Construction. Lots ~~of one acre meeting minimum lot size of 33,750 sq ft.~~ or more are required for new construction; the duplex shall not exceed 3,600 sq. ft.; the requirements of paragraph D shall be met.
- ~~D.~~ Conversion. Conversion of single family dwellings ~~in any zoning district except the Seashore District and the Water Resource Protection District~~ may be approved by special permit from the Board of Appeals (or Planning Board?). Lots shall meet current minimum lot area requirements; no more than one apartment in addition to the primary dwelling unit may be created from any one single family dwelling; ~~the floor area of the secondary dwelling unit shall not exceed 50% of that of the primary dwelling unit; the floor area of the secondary dwelling unit shall not exceed 600 sq. ft.~~
- E. Requirements. All new construction or conversions shall comply with the following.
 1. All applicable provisions of the building, health and safety codes, as determined by the Building Commissioner and Board of Health shall be met.
 2. One (or both?) units shall have a 12 month lease.
 - Question: If only require 12 month lease for one unit, then “There shall be no short term rentals (less than 8 months) of either unit.
 3. One unit shall be owner occupied? *Or do we allow for both units to be year round rental?*
 - ~~4. The applicant shall demonstrate that the new construction or conversion is essential to provide needed housing.~~
 5. The new construction or conversion is compatible with and will not derogate from or be detrimental to the neighborhood.
 6. Section 50, Area and Height regulations of this bylaw.
 7. The use is in harmony with the general purpose and intent of the bylaw.