

Truro Planning Board Workshop Minutes
February 1, 2017, 1:00 pm
Truro Town Hall

Planning Board members present: Bruce Boleyn, Peter Herridge, Paul Kiernan, Jack Riemer.
Absent (excused): Steve Sollog, Mike Roderick.

Other participants: Jonathan Silverstein, Town Counsel, Rae Ann Palmer, Town Manager; Russ Braun, Building Commissioner; Pat Pajaron, Health Agent; Carl Brotman, Housing Authority; Carole Ridley, Planning Consultant.

Mr. Herridge called the meeting to order at 1:07 pm.

Ms. Ridley introduced the plan for the meeting. She highlighted the most recent changes to the revised AADU: the Seashore Planner has indicated that only single family residences are allowed in the Seashore District. This is an issue that could be discussed further with the Seashore, but there would not be time to resolve this before Town Meeting, and therefore it is recommended that ADU not be allowed in the Seashore. This issue could be addressed in the future if desired. The other new revisions are under 42. C, Permit Criteria, which are based on discussions with Mr. Braun and Ms. Pajaron: 1) Eliminated #4, requiring that units share water and wastewater services. There is already verbiage that the ADU must comply with Title V. 2) Under #3, (new #4) section C, design requirements would ensure that the ADU is subordinate in design to the main house. 3) On the question of inspections, according to the Building and Health Departments, once the ADU is inspected and up to code, annual inspections would not be necessary. 4) The statement about a permit not being appealable can be changed.

With regards to amnesty: Discussion about how to know if a building that was built without a building permit is safe. Mr. Braun explained the process he uses for inspecting such units currently. Discussion occurred about whether to treat new construction differently than a unit already in place.

Also discussed: rental requirement and two-family homes.

This permit would not eliminate other Building and Board of Health requirements; all regulations would have to be met.

Mr. Riemer: Page 1, 10.4. 50% of main structure or less. What is the definition of kitchen?
Ms. Pajaron read the definition. Mr. Riemer would consider a 1,400 sq ft unit with basement as a duplex not an accessory unit.

Duplexes require a special permit, ADU would not and would be a discretionary permit. Difference between a permit and a special permit was discussed. State Zoning law deals with Special permit and variance. The State doesn't deal with other bylaw rules.

Zoning enabling act: under the home rule amendment, the town has authority to adopt new zoning rules, as long as they are not inconsistent with State law. We have site plan review, which is considered non-discretionary, which gives some control to the Planning Board, without giving discretionary veto power to the Board. The proposed ADU was structured similarly, to afford some control over the how the units are created and ensure consistency with criteria, but to make it easier overall for the applicant. Town Counsel talked about the difference between State law regarding permits and special permits. Discretionary v. non-discretionary.

The issue of allowing abutters to weigh in was discussed. The ADU revision includes public notice and a public hearing requirement.

Mr. Riemer questioned purpose #3: Provide homeowners with a means of obtaining rental income to defray housing maintenance cost. Is this at the expense of the Town? Ms. Ridley said that there are people who have large houses and are elderly and may need to additional income in order to stay in their home. Wellfleet has a grant program to assist low income buyers, but Mr. Brotman said that no houses in Truro qualify for this type of program.

Mr. Riemer brought up the issue of ADU's occupied by renters who meet a 150% of poverty income level. Without this, he is concerned about abuse. Ms. Ridley explained that there is a movement away from requiring affordability, because the market takes care of affordability if year round rentals are required. If you include the "affordability" there are many deterrents and you discourage people from building these units at all. There is still the option of the deed restriction for affordability if the home owner wishes to obtain the tax abatement.

Mr. Riemer wants to be sure that the ADU's will be for people who really need it.

Mr. Riemer said that we should be "making use of what is already on the ground."

Are we going to ensure there are two entrances/ exits, wired in smoke alarms? It was confirmed that all ADU units permitted under the bylaw would need to meet all applicable codes.

How would the Town handle unannounced inspections? Inspections are required for all the safety issues.

Amnesty for basement apartment would have to request a waiver from the two egress rule.

Definition of a kitchen: a range, a fridge, a sink, in Housing Code. There doesn't have to be a stove. Town Counsel: a kitchen is currently defined as intended to be used for food storage and prepare.

#2, Size of the unit—Concern expressed about if there is a basement, which could be turned into habitable space.

Town Counsel stated that current draft is not intended to be a discretionary permit. You can impose conditions that criteria are complied with, 40.2 C.4, size has to be clearly subordinate. So if it is not clearly subordinate in size, you can object. To retain the appearance of single family, privacy of neighbors can be considered. B 4, under 40.2 You can't create a new non-conformity without going to ZBA for a special permit or variance.

Is the description "clearly subordinate" subjective or objective? Town Counsel explained when something is accessory or subordinate, it is not really standardized. You know it when you see it. Mr. Riemer would like to make "subordinate" more specific.

40.2 C 3: Parking. Mr. Riemer thinks one parking space would be inadequate. On parking, the rule is at least one. Could the Board condition two for a unit of such and such a dimension.

#5 . An ADU cannot be converted into a condominium form of ownership because it would then be out of compliance with the bylaw requiring common ownership.

Who would enforce the 12 month rental? Do we have staffing to do the inspections? Ms. Palmer stated that it was her responsibility to deal staff resources for enforcement. The town is seeking a part time person looking at Air B n B, Home Away, etc., to be sure residents are registering their rentals. Ms. Palmer will be developing further enforcement policy.

If an ADU permit is abused and then withdrawn, the occupancy permit would also be pulled. But the unit could be turned into a habitable studio.

#7 Discussion that the ADU can become the principal residence, and house can be rented.

Mr. Riemer said that he thinks we should make annual inspections. Mr. Braun explained the inspection process and why annual inspections are not usually necessary. Town Counsel said that if we hear that an ADU has become a seasonal rental, we can inspect. Both Mr Braun and town Counsel indicated that requiring someone to sign a form to allow inspections at any time is not effective. An inspection would not be forced without a warrant.

Could we include an affidavit regarding what the penalty would be for violating the regulations of the permit?

Mr. Riemer would like to see the bylaw read: the Planning Board "may" instead of "shall" issue a permit.

Who will verify the affordability and details, applications, etc.? Ms. Ridley said they've been working on this, seeing how other towns do it.

Mr Riemer asked what would happen if requirements violated homeowners association requirements. Town Counsel confirmed that is a civil matter and not the Board's concern.

Mr. Kiernan: People are concerned that making this non-discretionary would bring abuse. If it is already built it could be non-discretionary. But if it is new construction, make it discretionary. Someone could build something, and then say it is an ADU.

81 L subdivision control law, ADU subdivision possible? Multiple structure exemption. You are entitled to get an ANR plan endorsed. No zoning protection for that. If a lot has two structures, one is an ADU. You just have to comply with Zoning.

Mr. Kiernan said he thinks a smaller size limit has a better chance of passing Town Meeting. Also, a special permit has a better chance.

B— requirement #3, ADU shall be in conformity of building code and Title V, etc.

If you put in the amount of the fine — say \$300— that could be a reassurance to citizens who are concerned about enforcement.

Town Counsel said there is no liability to the Town if someone builds a structure without a permit that then catches on fire.

ADU is a “use” permit. It doesn't mean someone doesn't have to comply with building code or health dept. Building code came into effect 1970 or so. There is a presumption that when something was built it was built to code. We know only on a case by case basis. You look at what you can get at.

Mr. Kiernan: “By right” or “not by right” is a big issue. Lowering the top limit of size, and making it a special permit would make it more palatable.

Incorporate the details about duplex housing. Up to but not greater 50% of the primary. Not to exceed 600 sq feet. Wellfleet limits ADU's to 1,200 sq ft.

Discussion to be continued at next Planning Board meeting February 7.

Respectfully submitted,


Katherine Black

