

TRURO PLANNING BOARD

Meeting Minutes

TUESDAY, August 15, 2017 – 6:00 p.m.

Truro Town Hall

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

Other participants: Attorney Lester J. Murphy, Jr., William Rogers, PE, Roberta Lema, Attorney Benjamin Zehnder; Christopher Clark, Harry Terkanian, Acting Town Planner.

Steve Sollog opened the meeting at 6:02 pm.

Public Comment Period

There was no public comment.

Continued Public Hearing - Commercial Site Plan Review

2016-008SPR Maria Kuliopulos seeks approval of a Modification to a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by four. Plans include construction of a replacement building containing 17 rentable units and a hospitality room in the same location as a previously demolished fire damaged structure. The property is located at 706 Shore Road, White Sands Beach Club, Assessor's Atlas Map 39 Parcels 131, 158. Hearing continued from March 7, 2017, May 2, 2017, June 6, 2017 and June 27, 2017.

Mr. Terkanian reported that the Zoning Board of Appeals has continued the Kuliopulos' hearing until August 28, 2017, since they need more information from the applicant. Mr. Terkanian has met with Ms. Kuliopulos and they agree that a continuance of the Planning Board hearing, until the ZBA process is completed, would be in everyone's best interest. Mr. Terkanian has spoken to Ms. Kuliopulos' attorney about how many board members are eligible to vote. Mr. Boleyn moved to continue the hearing to September 19, 2017. Mr. Kiernan seconded. So voted, 5-0.

Public Hearing – Commercial Site Plan Review

2017-007SPR Lexvest East Harbour, LLC seeks approval of a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by combining units, proposal also includes some changes to site improvements. The property is located at 618 Shore Road, East Harbour Cottages and Condominium, Assessor's Atlas Map 5, Parcel 13. This is the initial hearing on this application.

Lester Murphy and William Rogers explained the application. They are reducing the number of units in the motel structure from eight to five, adding porches and decks, but no other exterior changes.

In 2015, they completed a condominium conversion, and changed the property to multi-family use. Now they want to upgrade the property. They have already been before the Board of Health and received approvals. They have also been before the conservation commission.

The concerns expressed by the DPW Director about drainage were noted and the applicant was asked to have its engineer meet with the DPW Director on site prior to September 5th to review this issue.

Their last step will be to go before the Zoning Board of Appeals, because of the pre-existing non-conforming status. There will be new parking spaces. They are making some changes in walkways. No work is proposed in the beach area. Mr. Rogers talked about the changes proposed and went over them. Some walkways will be removed and grass planted. Some walkways will be added. They will increase the size of parking. Mr. Rogers went over the parking improvements. Then he described the proposed new decks, one for each cottage. There will be 28 parking spaces. Mr. Kiernan proposed a site visit for the Board.

Ms. Roberta Lema asked if anything is going to be done on the property across the street. The answer was, "No."

Site visit was scheduled for September 5th, 3:00 pm, before the next Planning Board meeting. Mr. Terkanian asked the Board if there was any additional information that they want the applicant to provide. A brief discussion of the elevations of the cottages occurred. There are some spot elevations on the site plan. Mr. Boleyn made a motion to continue the hearing to September 5, 2017, Mr. Kiernan seconded. So voted, 5-0.

Definitive Subdivision Plan – Review of Road Maintenance Agreement

2017-002PB Claire A. Perry, Trustee, review of proposed road maintenance agreement pursuant to §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located 27 Perry's Road, Map 45, Parcel 144. A definitive subdivision plan was approved on July 18, 2017.

Ms. Perry talked about the road maintenance agreement and those who would be included (family members). Mr. Boleyn asked about the frequency of inspections. Ms. Perry said those who live there do so year round, so they would repair the road when it needed it. She described the use of the road. Mr. Riemer asked about the agreement with the Conservation Commission. Ms. Perry said they didn't ask any questions about the road. They are still waiting to hear back. Mr. Riemer would like to review the decision of the Conservation Commission when available and incorporate it in this document.

Ms. Perry said she thought their concern was for sharing the cost of the maintaining of the roads. Another regulatory commission would supersede this agreement. Mr. Sollog said he

didn't think it would be needed as part of the road maintenance. Mr. Riemer wants a definition of "good repair." He has a question about snow removal, the condition of the turn around and the pull outs. He is concerned about safety. He is not comfortable with the agreement. Mr. Riemer asked if this could include homeowners outside the family. Ms. Perry said she was trying to include any future owners. Mr. Riemer suggested that a future owner may change the use of the property. Ms. Perry explained her goal that nothing will be done to impede the farming on the property. Mr. Riemer said he wants more detail on the agreement. Mr. Sollog and Mr. Boleyn said they thought the current document was sufficient. Mr. Kiernan asked for a line about plowing the turnouts and the turnarounds. Ms. Perry said she didn't think it was necessary, but she agreed to add it. Then Mr. Kiernan said that there would be a home owners association if the property changes in use. Mr. Riemer asked about the propane delivery issues. Mr. Kiernan made a motion to approve the road maintenance agreement as amended. Mr. Boleyn seconded the motion. So voted, 5-0.

Residential Site Plan Review – Request for Opinion of Counsel

2017-006SPR Christopher and Jane Clark, Board review of a proposed request for opinion of counsel concerning the zoning status of the subject premises. The property is located at 1 Higgins Hollow Road, Map 46 Parcel 289.

Mr. Terkanian said it was not clear at a previous meeting what the Board wanted him to ask Town Counsel regarding the Clark's project. There was discussion about the condition in the site plan approval that the property comply with all Zoning bylaws. There has not yet been an official finding that there is a zoning violation.

Mr. Zehnder said that there has been trespassing on the Clark property recently. He also reminded the Board that the hearing was closed, and the Clark's site plan approved.

There was a special permit in 1992 to relocate the barn. The Truro Building Commissioner said if the Clarks remove the kitchen in the barn (by removing the stove) before they move into the new house they are building, they will be in compliance with Zoning and he will be satisfied.

Mr. Kiernan asked Mr. Terkanian if the Board is within its rights to reopen the hearing. Mr. Terkanian said the Town Manager is the gate keeper for access to counsel, but since you have already closed the hearing, no, you cannot reopen the hearing.

Mr. Riemer said the Board was denied access to the interiors of the buildings. This being so, the plans failed to correct the violation. He said that the site plan approval has put the Planning Board in a position of approving a site plan on a property with a zoning violation. He wants the Board to revisit the decision. He feels that that the Board was misdirected by Mr. Zehnder and Mr. Clark. Mr. Zehnder said Mr. Riemer's comments are ill-advised. Mr. Zehnder explained the law and said he feels there is a vendetta against the Clarks. "The credibility of your Planning Board is at stake here," he said. Mr. Zehnder said the Board was in violation of open

meeting law. Ms. Tosh said that a review of the Clark decision was on the posted agenda for the August 1st meeting. The Clarks, however, were not notified as is the usual practice.

Mr. Sollog said he thinks we are here tonight to decide what questions to ask Town Counsel. Mr. Terkanian asked the Board if the applicant removes the stove, and the building inspector states there is no violation, would that suffice. Mr. Zehnder suggested adding the condition that the applicant provide evidence that the stove has been removed and the property is in compliance with Zoning.

Mr. Kiernan said he still wants to ask questions of Town Counsel. Mr. Riemer suggested sending a message to the Zoning Board of Appeals to tell them that we have not completed our review or our process. Mr. Terkanian advised against it.

Ms. Tosh provided the Board with a draft of proposed questions for Town Counsel. She read questions 3, 4, 7 and 8, as ones that she would like answers to. The questions are as follows:

1. Can a public hearing be closed by implication, e.g., by the Chair calling for a vote after all interested parties have spoken and the Board has deliberated? Or must the Chair gavel the hearing closed in order to officially close the hearing?
2. If a public hearing has been closed and a vote taken, can the Board set aside the previous decision and reopen the hearing?
3. Does the current decision, which specifically included a condition that the property comply with zoning by-laws allow the Board to require evidence of compliance prior to signing off on the site plan?
4. Zoning bylaw section 70.4.C.3a.2 provides that an applicant furnish “...*all applicable zoning bylaw information regarding the site’s development, both existing and proposed conditions*...” If the Board learns that “the application for site plan approval is incomplete,” as per 70.4.E(a), because not all information was submitted, e.g., that the “barn” is actually a dwelling that was not a grandfathered pre-existing non-conforming use, can the Board either set aside the previous vote to approve with conditions, change the previously discussed conditions, or reopen the matter for public hearing? If not, what do these terms mean?
5. Is the “barn” located on the property a pre-existing condition, given that a kitchen was added less than ten years ago, according to Town records?
6. Assuming there is a kitchen in the “barn,” which should be verified by the Owner, making the “barn” a dwelling, and only one dwelling is permitted in the Seashore District, can or should the Board approve a site plan that shows two dwellings, in clear violation of the Seashore District zoning bylaws?
7. Are Accessory Dwelling Units, as approved by Truro Town Meeting in April, allowed in the Seashore District? If so, can such a unit be approved prior to the Attorney General’s approval or denial of the bylaw?
8. If ADUs are allowed in the Seashore District, does a dwelling in excess of 1,000 square feet qualify as a ADU?

9. For the Planning Board to approve the Site Plan, must the Owners seek ADU status for the “barn,” prior to the main house being demolished a rebuilt?

Mr. Kiernan said he would like to ask Town Counsel all nine questions. Mr. Riemer spoke about the residential kitchen definition. Mr. Sollog said we should proceed from here. Mr. Kiernan made a motion to ask questions 1-9 inclusive of Town Counsel. Mr. Boleyn seconded the motion. So voted, 5-0. Mr. Riemer asked about the subdivision bylaw. Mr. Terkanian said it doesn’t apply in this case.

Mr. Zehnder said he would like to have fair warning of another hearing date. Mr. Terkanian suggested one of the September meetings for hearing Counsel’s answers to the questions. It was decided that Town Counsel’s answers would be placed on the September 5th agenda.

Review and Approval of Meeting Minutes

July 18, 2017 Regular Meeting

Mr. Riemer moved to approve the minutes of the July 18th meeting as written, Mr. Boleyn seconded. So voted, 5-0.

August 1, 2017 Regular Meeting

Mr. Boleyn made a motion to approve the minutes of the August 1st meeting as written, Mr. Kiernan seconded. So voted, 5-0.

Reports from Board Members and Staff Acting Town Planner report.

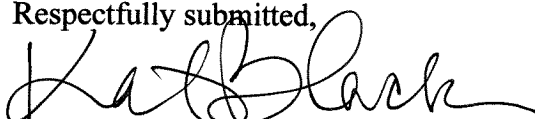
Mr. Terkanian provided a report which included the July building report on permits issued, a Zoning Board of Appeals decision, and an example of a by-law for town-wide house size limits. He provided a preview of items for the September 5th Planning Board meeting.

Mr. Terkanian provided some resource material, a handbook and CDP documents, subdivision control documents, a summary of zoning bylaws, and all types of decisions planning boards are faced with. Mr. Riemer asked if the board would like to pursue a workshop with Town Counsel as soon as possible, maybe sometime in September.

Mr. Sollog brought up the need for a sub-committee for the town-wide house size limits bylaw. Mr. Riemer said he would like to be on the subcommittee. There is information on the Town website that there is a pursuit of this idea. The Board of Selectmen have put something up on the website. The Planning Board could align with them.

Mr. Riemer moved to adjourn, Mr. Boleyn seconded. So voted, 5-0.
Meeting adjourned at 8:00 pm.

Respectfully submitted,


Katherine Black

