

TRURO PLANNING BOARD
MEETING MINUTES - July 22, 2014
Town Hall, 24 Town Hall Road, Truro, MA

Members Present: Leo Childs, Bruce Boleyn, Lisa Maria Tobia, Michael Roderick, Chris Lucy, and William Worthington **Member Absent:** Steve Sollog

Others Present: Charleen Greenhalgh, ATA/Planner, Chet Lay, Benjamin Zehnder, Peter Allner

The meeting was called to order by Mr. Childs at 3:05pm.

2014-002 Peter Allner Approval Not Required Plan, Slade Hill Road

Representative: Benjamin Zehnder, Chet Lay

Mr. Zehnder explained that a withdrawal of this application was filed with the Town Clerk, this was done in error. At this time the applicant seeks to withdraw the withdrawal. On a motion from Mr. Worthington, seconded by Mr. Lucy, the Board voted unanimously to withdraw the request for withdrawal 6-0-0.

Mr. Zehnder then explained that the property consists of 3 parcels. MGL c.41, §81L affords that provided buildings existed prior to the adoption of subdivision control law (December 1955) a parcel can be divided. The applicant received a report from the president of DEI Col-East, Inc. stating that after reviewing a 1947 aerial photograph, it does show the existing structures. The Assessor's records provide a building date of 1974; however, this appears to be the date that the roof was replaced, not when the building was constructed. Mr. Zehnder feels that the evidence shows that the structures were there before 1955. In addition, endorsement does determine that the lots are in conformance with zoning. Mr. Worthington asked about a road for frontage. Mr. Zehnder stated that the lots do not have frontage on a road; however 41, §81L does not provide for that, it does not require frontage. Ms. Tobia raised the same concern about frontage and asked for a clearer explanation. Mr. Zehnder and Mr. Lay explained that MGL c.41, §81P requires the frontage to be present. He referred to the Citgo case. Mrs. Greenhalgh then read from the ANR Handbook (Pages 69 – 71), which states:

Whether a plan is entitled to be endorsed as “approval under the Subdivision control Law not required” is determined by the definition of “subdivision found in Chapter 41, Section 81L, MGL. Included in this definition is the following exemption:

...the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such building remains standing, shall not be a subdivision.”

Mrs. Greenhalgh read further:

“The 81L exception applies in a subdivision context and is unrelated to zoning. Lots created by the exception must stand or fall on their own for zoning purposes. This is recognized by the Appeals Court:

“...just because a lot can be divided under this exception does not mean that the resulting lots will be buildable under the zoning ordinance. *Smalley v. Planning Board of Harwich*, 10 Mass. App. Ct 599 (1980).’ *Citgo*, at 427.”

Before a building permit can be issued for something other than general maintenance, these lots would need to seek relief from the Zoning Board of Appeals. On a motion from Mr. Roderick, seconded by Ms. Tobia the Board voted unanimously (6-0-0) to endorse the plan as approval not required. Mr. Lay will bring in the Mylar for the Board members to sign. The Board signed three paper copies.

Adjourn 3:30pm

Respectively Submitted, Charleen Greenhalgh, ATA/Planner