

**TOWN OF TRURO  
Planning Board  
MEETING MINUTES  
July 24, 2019  
TRURO TOWN HALL**

**Members Present:** Chair-Steve Sollog, Karen Tosh, Jack Riemer, Bruce Boleyn, Anne Greenbaum, Paul Kiernan, Peter Herridge

**Members Absent:** None

**Others Present:** Interim Town Planner-Jessica Bardi, Town Counsel-, Atty. Ben Zehnder, Architect- Gary Locke, Atty. Jonathan Silverstein, Andrew Clemens, Christopher Lucy, Nick Brown, Clinton Kershaw, Robin Reid, Michael Guy, Cherie Mittenthal (Executive Artistic Director of Truro Center for the Arts at Castle Hill), Don Poole from Outermost Land Survey

Chair Sollog called the meeting to order at 6:04 pm.

**Public Comment Period:** No public comments.

**Temporary Sign Permit Applications**

**Truro Center for the Arts, for four (4) signs, either 36" x 22" or 48" x 36" to be located at Castle Road, Pamet Roads exit, Downtown Truro, and Truro Center Road. The signs will be installed on August 1<sup>st</sup> and removed August 12<sup>th</sup> for an event on August 10<sup>th</sup>.**

**Member Kiernan made a motion to approve the four signs for Truro Center for the Arts.**

**Member Boleyn seconded.**

**So voted, 6-0-1 (Member Tosh abstained), motion carries.**

**Erin Sullivan-Silva, for two (2) banners each 4' x 8' to be located at 298 Route 6. The banners will be installed on July 24<sup>th</sup> for an event on July 24<sup>th</sup>.**

Member Greenbaum had two questions;

- What is the removal date?

Chair Sollog states that he believes the signs will be up for the full 30 days which their permitting allows. Interim Planner Bardi added that the Board could condition the approval for a total of 30 days.

- The sign sizes are 4' x 8' each. They are bigger than what is allowed in the sign code for permanent signs, so she's questioning the size.

Chair Sollog said they can still approve the signs, and have it limited to the time-period that is allotted, or the Board can ask that the applicant reduce the size of the signs.

Member Kiernan had a question as well. He would like to know if the signs would be on their property.

Chair Sollog re-read the application, which states the signs would be placed at 298 Route 6. Member Kiernan is willing to err on the applicant's side with the condition that the signs be on their property and that they will be in place for 30 days with this permit.

**Member Kiernan made a motion to approve the two banners to be located at 298 Route 6 with the conditions that the signs be on their property and that they will be in place for 30 days with this permit.**

**Member Greenbaum seconded.**

**So voted 7-0-0 (with conditions), motion carries.**

**Friends of the Truro Library, for two (2) yard signs each 27" x 18" to be located at Snows Park and at Route 6 near library, plus four (4) small real estate signs, and one (1) banner 2 and ½' x 6" to be located at the junction of Route 6 and 6A. The banner and signs will be installed on July 31<sup>st</sup> and removed August 14<sup>th</sup> for an event on August 7<sup>th</sup> (rain date August 14<sup>th</sup>).**

**Member Tosh made a motion to approve the two yard signs, four real estate signs, and one banner for the Friends of the Truro Public Library.**

**Member Herridge seconded.**

**So voted, 7-0-0, motion carries.**

**Highland House Museum, for one (1) yard sign 48" x 36" to be located on Route 6 near South Highland Road for July, August, and September. The sign will be installed on July 1<sup>st</sup> and removed July 31<sup>st</sup>; installed on August 1<sup>st</sup> and removed August 31<sup>st</sup>; installed on September 1<sup>st</sup> and removed September 28<sup>th</sup>.**

Interim Planner Bardi informed the Board that the applicants had submitted three separate applications (one for each month).

**Member Herridge made a motion to approve the one yard sign for Highland House Museum for the dates specified.**

**Member Boleyn seconded.**

**So voted, 7-0-0, motion carries.**

#### **Public Hearing**

**(continued) 2019-007/SPR Peter Clemons and Marianne Benson, for property located at 40 Cliff Road, Truro (Atlas Map 32, Parcel 19A). Applicants seek approval under Section 70.4 of the Truro Zoning Bylaw for the construction of a single-family dwelling on a 7,616 s.f. parcel of vacant land in the Seashore District.**

Member Riemer stated that he signed an affidavit that after missing the last meeting, he watched the recorded video in order to take part in this public hearing. He also disclosed that he'd had a discussion with Mr. Downey after the site visit at 40 Cliff Road, but it had nothing to do with the matter at hand. Member Kiernan was also absent and filled out the Mullins Certification and presented it to the Town for recording. Atty. Zehnder asked Member Kiernan if he also watched the video of the last meeting, which Member Kiernan confirmed.

Atty. Zehnder is representing Peter Clemons and Marianne Benson, who are the owners of 40 Cliff Road. At the last meeting, Atty. Zehnder had requested that the Board deem the application complete, which the Board declined to do. The Board wished to see an existing and proposed landscape plan. Said plan has been received by the site engineers and he would like to pass that out to the Board members. What is in front of the Board today is a determination as to whether or not, under their Site Plan Review law, the application is complete. After that, there are five review criteria;

- **The relationship of the building and the structures to the environment.** The proposed development shall relate to the existing terrain and lot and shall provide a solar and wind orientation which encourages energy conservation. Atty. Zehnder pointed out that the long side of the house is oriented to the south-southwest.
- **Building design and landscaping.** Proposed development shall be consistent with the character and scale of the buildings and structures in the neighborhood through the use of appropriate

scale, massing, building materials, screening, lighting, and other architectural techniques. The house is of conventional Cape Cod architecture.

- **Preservation of landscape.** The landscape shall be preserved in its natural state insofar as practical by minimizing any grade changes and removal of any vegetation or soil. The lot is naturally vegetated and is roughly flat. The majority of the lot will remain in its natural vegetated state. Revegetation will be done with native plantings.
- **Circulation.** Curb cuts and driveway shall be safe and convenient, consistent with Chapter 1 Section 9 of the General Bylaws.
- **Lighting.** Shall be consistent with Chapter 4 Section 6 of the General Bylaws. Protection of adjacent properties of the night skies from intrusive lighting will be provided by downward/shielded lighting and a minimum of lights on the exterior of the property.

Member Tosh stated that if the Zoning Enforcement Officer confirms that 40 Cliff Road is a buildable lot, that's good enough for her. She looked into the title herself because she was afraid the question would come up and she wanted to be familiar with it.

Member Kiernan asked if Atty. Zehnder would explain about the title. It's his understanding that there are a number of places where the direct abutter has claimed ownership. Atty. Zehnder stated that the developer deeded out Lot 511 and then Lot 511 continued to be deeded out into the chain of title of Marianne Benson and Peter Clemons. Then a subsequent purported owner executed and delivered a deed to the Dickinson's (abutters to 40 Cliff Road) predecessor in title, but that person did not own the land. There was no back title behind that deed. The problem is that once you execute and deliver a deed to someone, that description carries forward in the subsequent deeds that follow.

Chair Sollog asked to talk about the number of stories proposed in the dwelling. He asked Atty. Zehnder why this dwelling would not be considered three-stories tall. Atty. Zehnder stated that there is an open loft area. An open loft is not considered to be a bedroom space. Member Kiernan added up what he could on the plan and came up with 29.657 feet in height. Atty. Zehnder noted that if the Board would look at the site plan, there was a height calculation on it of 29.9 feet.

Member Kiernan wished to ask some questions to the engineer. Gary Locke came up to the Board. He is the architect of this job. Member Kiernan stated that on the plan it says Cliff Road, private way, and there is about 36 feet of frontage drawn right on the road. He'd like to know if that's a mistake. Mr. Locke answered that it is not a mistake. Member Kiernan then asked how many feet were on the road. Mr. Locke stated that on Cliff Road it has 35 feet. On Chatham Avenue (private way-30 feet wide) there is 107 plus 34.14. There is also frontage on Mayflower Road of 40 feet. Member Kiernan asks if he's satisfied the 50 feet necessary for the original (50 feet of frontage and a 5,000 sq. ft to be a buildable lot). Mr. Locke confirms that it is a buildable lot.

Mr. Kiernan's second question has Mr. Locke looking at the zoning notes. #4 says "gross floor area". He asked if Mr. Locke was aware that there is a bylaw change that has a Seashore District total gross floor area definition. Atty. Zehnder states he'll answer any questions to that, and he is aware of the definition. Member Kiernan goes on to read the definition. As he looks at the third-floor area (described as a loft) there's an additional 351 square feet that are not included in the gross floor area calculation. Mr. Locke states it's a storage loft and not for principal use. Member Kiernan believes this could be livable space as it has six windows, two skylights, and a spiral staircase leading up to it. If you add the square footage in, you get 2,059 square feet. Atty. Zehnder just did a calculation of permissible gross site coverage would be on this lot, he comes up with 3,037 sq. ft of site coverage for a lot of this size. They are still 1,000 feet under the permissible square footage.

Atty. Silverstein asks Atty. Zehnder to speak to the number of stories. If it doesn't meet the definition of an attic then it constitutes a story under the definitions, then you have three stories. Member Riemer noted that there is no definition of a loft. Atty. Zehnder believes Atty. Silverstein is correct, and he

suggests striking the loft from the plans. Member Kiernan would like to see the changed plan. Chair Sollog asks Member Kiernan if they could just condition the approval. Atty. Zehnder states that there will be no change to the outside of the building.

Member Greenbaum noted that the proposed driveway is shown on (not off of) Chatham Avenue, and she asked Atty. Zehnder to explain. Atty. Zehnder answered that Peter and Marianne own the entirety of Chatham Avenue between the two lots, subject to the rights of other people to pass over and use it. They cannot block it. Putting in a driveway does not compete with someone wanting to pass over it. Member Kiernan looked at a plot plan and does not see any ownership to the center of Chatham Avenue. Atty. Zehnder pointed out that plot plans do not show ownership of ways. Atty. Silverstein added that if a deed does not specify that ownership of a road is being maintained by the grantor then the presumption is that the lot owners on either side of a road own the fee in the road along their frontage to the center line. Since they own the frontage on both sides of the road, they would therefore own the fee in the road.

Member Riemer asked why the two lots would not therefore be merged. Atty. Silverstein answered that others have rights to pass over this road. The Doctrine of Merger is a doctrine that the courts created to further the public interest in reducing non-conforming lots. The courts have said, when you own two lots separated by a road, you can't merge those lots because people have the right to drive on the road. The Doctrine of Merger would not apply here.

Member Kiernan had a question regarding Cliff Road. A portion of the road has been maintained with hardening past a few properties and then the hardening stops. You have to go through three large holes before coming to 40 Cliff Road. He would like to know if the road needs to be improved. Atty.

Silverstein answered that the courts have recognized that it's legitimate to require safe access. This does not mean building it to subdivision standards. It is something of a discretionary determination. Most towns do not have residential site plan review, therefore normally it would be a determination of the building official. Since Truro does have residential site plan review, it is acceptable for the Board to determine the adequacy of the access. It is something they could condition upon site plan approval. Atty. Zehnder added that if the Board wishes to condition this that they do so with the condition that the improvement of the road be such as is required by the Building inspector, or Fire Chief, for safe and adequate access. He's also asking that they respect the rural character of the road.

Member Kiernan initiated another discussion regarding the size of the dwelling, compared with the next-door neighbor. Atty. Zehnder countered that he believes this house falls within the size and mass criteria, within the neighborhood.

Member Tosh believes the development is totally consistent with the character and scale of the neighborhood. It is a relatively modest house that's nicely done and will not detract from the neighborhood. She asks for the Board to move on.

Member Riemer states that the zoning information is not listed on the site plan. He thinks it should list what the setbacks are. Atty. Zehnder stated that there are no setbacks. Chair Sollog added that this information is not required because it was created long before this information was documented.

Member Riemer is also looking for a topography and grading plan. He also believes the Board is to address Massachusetts Natural Heritage Species Act and indicate its jurisdiction. He cannot find that on any of the plans. Member Riemer also points out that there is no indication of limit of work area. Atty. Zehnder states that there is a limit of work area and a topographical plan. Member Riemer continues, stating that there are no photographs of the area to depict the neighborhood. Member Riemer believes the application is not complete.

Atty. Zehnder responded. At the last meeting the completeness of the application was explored. He was informed by the Board that it was complete, save for an existing and proposed landscape plan. Member Riemer was not present at that meeting. The members have been out to the site and he's not

sure that providing photographs of the adjacent houses is in any way going to change the view of any member.

Chair Sollog has announced that he will now go through the list of items which Member Riemer has raised, to see if any of them are necessary. Chair Sollog asks Mr. Locke what the setbacks are from the lot lines on the Northwest side. Mr. Locke stated they are 12.5 feet from the proposed deck to the Dickerson lot line, and 16 feet in the rear portion of the house to the Dickerson lot line. From Cliff Road, it is 23.07 feet to the angled 34.14 property line. The South side has 16.09 feet closest to Cliff Road and 12.72 feet at the rear. Member Tosh thinks the aerial view is helpful as it shows the setbacks for the Dickerson's property as well. Chair Sollog asks the Board if the zoning needs to be clearly stated somewhere on the plan, or are they satisfied that this is pre-zoning.

Member Tosh states it's single-family as of right.

Member Kiernan states he is satisfied.

Chair Sollog asks if there was supposed to be a contact to MESA. Member Riemer thinks it's required. In order to not stall this, Chair Sollog stated they can condition that a MESA approval could be forthcoming with any conditions they have.

Member Kiernan stated that as a practical measure, they have a building which is 30 feet high, and a sideline that's 12 feet away. If you put a ladder up 30 feet and you're only out 12 feet from the edge of the house, is that safe?

Chair Sollog opens the Public Hearing up to the audience.

Andrew Clemens comes up to speak. He is a resident of Truro. He explained that this application is for his brother and himself to have year-round housing. This is their best shot at having a future here in Truro.

Member Riemer wanted to discuss the staging area. Will staging occur on seashore property? Atty. Zehnder pointed out that they own the property across the street, and the street. So as long as the road is not blocked, they can do whatever they want on that other lot.

Regarding the MESA question, Atty. Zehnder would ask for a condition on the plan that they resubmit the plan to the Building Inspector, showing the mapped area if it's there. Member Riemer stated that he'd had a discussion with Health/Conservation agent Emily Beebe and mapped areas require notification and filing with MESA. Chair Sollog believes that is for the building permit.

Chair Sollog closes the public hearing.

Member Kiernan asks that conditions be voted on before a motion is made.

**Member Tosh makes a motion to approve conditions as follows:**

- **That a plan will be submitted to the Building Commissioner showing removal of the loft and the staircase.**
- **That the plan submitted to the Building Commissioner will show MESA mapping and that the plan will be subject to review and approval by MESA, or otherwise complying with their requirements.**
- **The Building Commissioner, in consultation with the Fire Department and the Chief of Police, would determine that the road is safe and adequate. If they did not make that determination, that improvements would be made to their satisfaction.**

**Member Herridge seconds.**

**One condition added by Member Kiernan:**

- **The building shall remain two floors only and shall remain a single-family residence.**

Member Tosh objects to the conditions posed by Member Kiernan stating that they are outside the Board's jurisdiction. Member Tosh states that there is a motion and a second on the first three conditions.

**So voted; 7-0-0, motion carries.**

**Member Herridge makes a motion to approve the site plan with the three conditions as stipulated.  
Member Greenbaum seconds.  
So voted, 6-1-0 (Member Kiernan opposed), motion carries.**

#### **Public Hearing**

**2019-008/SPR-Jeffrey and Jennifer Goldstein, for property located at 37 Old Outermost Road (Atlas Map 41, Parcel 2, certificate of title number 219048, land court lot number 11 and plan number 18231-O). Applicants seek Residential Site Plan approval under Section 70.4 of the Truro Zoning Bylaw for the reconstruction of a single-family dwelling and construction of a garage/habitable studio. This property is located within the Seashore District.**

Atty. Ben Zehnder is before the Board on behalf of the Goldsteins. Jeffrey Katz is in attendance and was the architect that designed the structure and can answer any questions about the design of the structure. From a procedural standpoint, this is going to require a Special Permit from the Zoning Board of Appeals. They will be going before the ZBA in a couple of weeks. This is an alteration on a pre-existing, non-conforming lot lacking street frontage. This is not an application that is going to exceed the By-Right site coverage under the National Seashore house size bylaw. The lot is 3.75 acres. The permitted site coverage is 3750 square feet, as of right. By Special Permit you can apply for up to 4,750 square feet. When you total the various sections of the habitable studio and the sections of the house, it's 3,483 square feet. They only need to go to the Zoning Board for alterations on a house on a pre-existing, non-confirming lot. Member Riemer asked if the habitable studio would also need to be reviewed by the ZBA. Atty. Zehnder stated that it is not an ADU and therefore does not need to go before the ZBA. There is no kitchen in this structure. If you do not place a kitchen in it, it's like any other accessory dwelling, like a shed or garage. He also added that he'd been in touch with Lauren McKean, Chief Land Planner of the National Seashore, and she'd indicated that she would have no comments on this project.

An existing site plan has been submitted, along with a proposed site plan showing the removal and rebuild of the existing dwelling in the same location. There is a proposed addition connected by a second story passageway via the main dwelling, and a garage with a studio above it. Lighting is shown on the plan, assessor's field cards are being submitted along with photographs of other homes in the neighborhood.

Chair Sollog asked if the National Seashore responded in any other way to Atty. Zehnder as far as this project. Atty. Zehnder explained that when they filed the application with the Town, he submitted a copy of the application to the Superintendent at the National Seashore, and Lauren McKean. He got a phone call Monday from Ms. McKean asking for copies of the plans and he resent them to her. He received an email thanking him for the plans and that she would not have any comments. He also informed her of the site visit, in case she or a representative wished to go.

Chair Sollog went over the review criteria.

- The abutters list was supplied
- Filing fee was paid for
- Property Assessment Card
- The title was searched back
- Outdoor lighting and landscape plan
- Existing conditions
- Sewage disposal system design
- Building plans

Member Riemer asked if there had been a filing with MESA, he noticed on the plan it had been identified as falling within an area which would require filing. Atty. Zehnder explained that per the Planning Board bylaw requirement they have to show on the plan the MESA location. Member Riemer stated that was not consistent with the report received by the Conservation Agent. He was advised that the area had been identified as being within a mapped area and that documentation and filing with MESA, and a review, is a requirement. Atty. Silverstein explained that there were two things:

1. Whether or not the site plan approval application is complete. The completeness requirement in the bylaw is simply to show the jurisdictional limits of any wetlands and endangered species.
2. Whether there's also a regulatory requirement to proceed through MESA or through the Conservation Commission or Board of Health, those are all separate regulatory schemes that would be required in addition to site plan approval.

Chair Sollog asked who would get to make the choice how it is applied. If the Planning Board is doing a site plan review, and they see that it is within a MESA review area, who gets to determine that the applicants need to apply to MESA for review of their project. Atty. Silverstein replied that MESA would be the ones to determine that. The Planning Board doesn't tell them what to do with any other regulatory agency. He presumes that Town Meeting included this mapping requirement so that the Board would have a broader understanding of what some of the site constraints might be. If the applicants go through MESA review and the site plan changes, they'll have to come back to the Board. The Board could argue that it may be in the best interests of the applicant to try and resolve as much as possible before coming to the Board, but it is up to the applicant to do that.

Chair Sollog confirmed that the bylaws only require MESA areas to be mapped on the plan, it doesn't ask the applicant to do anything other than identify. Atty. Silverstein agreed. Chair Sollog asked, if the Board approves to move forward, at what point would MESA be involved. Atty. Silverstein stated that it would be before the applicant got a building permit.

Member Riemer cited section 70.1-Purpose-site plan review, it states that the Board is supposed to determine the potential impact on public services, infrastructure, pedestrian and vehicular traffic, and significant environmental and historical resources. He believes an environmental resource would be an endangered species. Chair Sollog countered that's why MESA exists. The Board is to ensure the identification of locations. Atty. Zehnder added that it's the Board's purpose to protect those interests. The purpose does not say that it's the Board's job to take action. If the Board requires that the applicant go to MESA, Atty. Zehnder does not have a problem with that, as they have to go to MESA before obtaining a building permit anyway.

Member Riemer wished to refer to a drawing indicating Assessors Map 41 Parcel 2. He states that it identifies the access to where the construction will be, wandering outside the line and into abutting lots. Chair Sollog stated that it's an existing drive. Member Riemer does not know what the effect will be of heavy equipment going over the existing driveway, and he's not sure the National Park Service reviewed this. Atty. Zehnder let the Board know that if the NPS had any concerns over any aspect of the application, they have a right to participate and be heard. He recognizes the roadways to this property (all the way from Longnook or Dew Line Road) are two track dirt roads, and the driveway is similar in nature. The seashore has a policy of not interfering with, or obstructing the use of, existing driveways and roads that provide access to properties within the seashore. A condition on this application which requires the applicant to remediate and repair any damage caused to this road in completely appropriate.

Chair Sollog asked if anyone in the audience wanted to come up and comment. No one came forth.

**Chair Sollog closed the public hearing.**

**Member Tosh made a motion that the Board adopt the following condition on the approval of the site plan 2019-008/SPR-Jeffrey and Jennifer Goldstein:**

- The applicant will remediate any damage to the roadways leading to the property that occurs during the construction of the residence.

**Member Herridge seconds.**

**So voted; 7-0-0, motion carries.**

**Member Tosh made a motion in the matter of 2019-008/SPR-Jeffrey and Jennifer Goldstein to approve the residential site plan for the reconstruction of a single-family dwelling and construction of a garage/habitable studio on property located on 37 Old Outermost Road (Map 41, Parcel 2) in accordance with Section 70.4 of the Truro Zoning Bylaw, and as per plans filed with this Board based on findings that the criteria under Section 70.4D have been complied with and with the condition as previously voted on that any damage to the road will be remediated at the conclusion of the construction.**

**Member Herridge seconds.**

**So voted; 7-0-0, motion carries.**

#### **Public Hearing**

**2019-003/PB-Christopher Lucy, for property located at 16 Glacier Drive (Atlas Map 47, Parcel 150). Applicant seeks an Accessory Dwelling Unit Permit pursuant to Section 40.2 of the Truro Zoning Bylaw. The proposed location of the Accessory Dwelling Unit is within the existing garage structure on the property.**

Christopher Lucy approached the Board. Chair Sollog mentioned that the Board visited the site and began going over requirements of completion of the application.

- Application for an Accessory Dwelling Unit.
- Certified abutters list.
- Site Plan of 16 Glacier Drive.
- Septic system design plan.
- Upgraded septic system design plan.
- Existing dwelling building plan.
- Existing dwelling elevations.
- Existing dwelling floor plans.
- Proposed garage/attic conversion.
- Proposed garage/attic conversion elevation plan.
- Proposed garage/attic conversion lower level plan.
- Approved title 5 variance by the Health Department.
- Affidavit of applicant declaring ADU will be rented on a 12-month basis.
- Public notice was posted in the Banner.

Member Riemer would like to acknowledge the letter the Board received from Mr. and Mrs. Burhoe. He appreciates input from people in the neighborhood that about a project. Chair Sollog agrees and reads the letter for the record. The Burhoe's are in favor of the project. Mr. Lucy added that he also has a letter from the neighborhood association stating that they have no objection to the project as well. Chair Sollog asked Mr. Lucy to describe the septic system as it is a style which the general public may have no knowledge of. Mr. Lucy explained that while planning the project he found that he had a three-bedroom home on a three-bedroom lot. The regulation, through the Board of Health, stated that an innovative system (IA system) can only be used for remedial use, or in a situation where there were no other options for a situation of setbacks from wetlands, ground water, etc. The bylaw was then changed to use IA systems with apartments. Mr. Lucy continued, explaining exactly how an IA system works. Part of the system is that you need a management agreement where an outside agency comes and tests



the water and tests the nitrogen that's in the wastewater four times per year for the first year. The end result is the effluent that comes out of the system is much cleaner before going into a leaching area, and subsequently back into the ground water. It removes 70 to 80 percent of the nitrogen that would typically go into a normal septic system. Member Riemer asked when the alarm gets set off in the event that a gallon of bleach gets dumped into the system. Mr. Lucy explained that it's a remote monitoring where the company can tell you various issues such as a leak in your tank, chemicals dumped into the system, etc. Member Riemer asked about the cost to the homeowner. Mr. Lucy answered that the components themselves, depending on the size of the system, cost between \$12,000-\$15,000. The leaching is a minimally priced. The difference between this, and another IA system (the Fast system) is that the Fast system costs an additional \$100-\$150 extra per month electrically, vs. \$10-\$12 per month electrically. Member Kiernan confirmed that with this system, it would allow an extra bedroom and kitchen with a better effluent. Mr. Lucy agreed. He also confirmed that he would have the alarm component on the system.

Chair Sollog asked the public for any comments. Nick Brown came before the Board. He has installed six of these systems already. He thinks that the cost being paid for by the owner, and not the Town, is the way to go. He applauds the effort and would like to see more.

Chair Sollog stated that if there were no other comments, he would close the public hearing. No further comments were heard, and the public hearing was closed.

**Mr. Herridge made a motion in the matter of 2019-003/PB-Christopher Lucy to grant a permit for an Accessory Dwelling Unit pursuant to Section 40.2 of the Truro Zoning Bylaw with respect to property located at 16 Glacier Drive (Atlas Map 47, Parcel 150) in accordance with plans submitted with this application subject to the following conditions:**

- **Once an ADU has been added to a dwelling structure or lot, the ADU shall not be enlarged beyond the square footage specified in the permit granted pursuant to Section 40.2 of the Truro Zoning Bylaw without first obtaining a subsequent permit from the Planning Board and in no case shall an ADU be permitted to exceed the square footage allowed by Section 40.2 of the Truro Zoning Bylaw.**
- **The principal dwelling, ADU, and lot on which they are located, shall remain in common ownership and shall not be severed in ownership, including that the lot, buildings or units thereon shall not be placed in a condominium form of ownership.**
- **Either the ADU or the principal dwelling on a lot with an ADU must be leased for a term of at least twelve months. Rental of said unit for a period of less than twelve months, including but not limited to seasonal rental and rental through vacation rental services (including websites) is prohibited. Proof of year-round rental should be provided annually to the Building Commissioner by the owner in the form of a lease and a signed affidavit from both the owner and the renter stating the unit is being rented accordingly and is used as a primary residence.**
- **The ADU shall be inspected annually, or as frequently as deemed necessary, by the Health and Building Departments for compliance with public safety and public health codes. The owner of the property shall be responsible for scheduling such inspection and shall pay any applicable inspection fee.**

**Member Boleyn seconded.**

**Member Riemer mentioned that it was recommended by the Interim Town Planner, that if a permit is granted the Board should consider adding language about enlargement of the ADU in the conditions of the permit. Both Interim Town Planner Bardi, and Member Kiernan both let Member Riemer know that exact topic was covered in condition number 1.**

**So voted; 7-0-0, motion carries.**

## **Public Hearing**

**2019-004/PB-Clinton Kershaw, seeks approval of an application for an Accessory Dwelling Unit Permit pursuant to Section 40.2 of the Truro Zoning Bylaw. The property is located at 9 Highland Avenue, Map 22 and Parcel 35, and includes two existing structures.**

Clinton Kershaw and Robin Reid approached the Board. Ms. Reid wished to remind the Board that the ADU application was for the smaller, older, building on the property. This property is also subject to a variance from the Board of Health concerning the technical difference between two bedrooms in one dwelling unit and two bedrooms (one each) in a dwelling unit. That is why they are going to the Board of Health, to deal with the septic issue. The matter has been continued, because the Board of Health does not want to decide on the variance until they have heard from the Planning Board that this is an ADU. Ms. Reid proceeded to review criteria to prove that the until conforms to the definition of an ADU.

Member Kiernan pointed out that under the ADU Bylaw, the Board cannot waive parking. Under their parking requirements they require that the parking spaces be on the property and that they not be within ten feet of the property line. For the Board to approve this, they would need to see a plan (that had been proposed when Ms. Reid first came to the Board) showing that there was an entrance in and four parking spaces in part of the lawn. With that, the two parking spaces that are right on the property line on one end, the applicant wouldn't have to take the garden out and the three parking spaces shown could turn into a single driveway coming in to serve the four spaces. Secondly, the previous ZBA Special Permits seemed to go away. There were two Special Permits that said there should only be two bedrooms on the lot, and it turned out there were three bedrooms. Member Kiernan has a suggestion which may help. Between the existing bedroom in the old building and the existing den if a seven-foot wide opening is created between the two it will essentially create one large bedroom and prevent a tenant from taking in a second boarder.

Ms. Reid wished to ask a question about the parking spots. She would like to know if the Board is asking them to deliver a plan that shows those parking spots or if they are asking her to build the parking spots. Member Kiernan stated that she needs to show those parking spots on the property. They can condition it, to grant the ADU, but they must be created. Ms. Reid stated they were trying to avoid moving the parking as doing so would destroy an area. Member Kiernan read from the bylaw which states an ADU must have two off-street parking spots. Ms. Reid argues that the parking as it is works just fine. Member Kiernan is unwilling to violate the law. Member Riemer would support Member Kiernan and would be willing to support the plan with the applicant accepting the two conditions suggested by Member Kiernan. Member Kiernan pointed out that there is already a tenant on the property and that the owner is already living in a building that has two special permits stating there should be no sleeping there and no living space there. Per Member Kiernan, Mr. Kershaw is currently in violation. The bylaw also states that the Board can condition the ADU or deny it if they cannot come up with conditions. Ms. Reid believes the bedroom piece is going to be properly dealt with at the Board of Health. She is hoping to come to an agreement about the parking without having to move it, unless the way is widened. Michael Guy came up to speak. He lives directly behind Mr. Kershaw and completely supports the project.

Atty. Silverstein mentioned that looking at Section 30.9, Section B, indicates that single or two-family dwellings are exempt from the entire section except for the section which requires two parking spaces. It would appear that the other design requirements, perhaps, might not apply to a single-family house with an ADU. His suggestion would be that the Board impose a condition that the applicant either obtain a determination from the Zoning Enforcement Officer that the existing parking complies or, if the Zoning Enforcement Officer determines it does not comply then the applicant would either need to move the parking spaces fully onto the lot or obtain a variance from the ZBA.

Member Greenbaum had a question. She wasn't at the site visit. Is she correct in understanding that the parking shown on the plan is not the current parking? Mr. Kershaw and Ms. Reid explained what she was looking at.

Member Riemer recalls discussion at a Town Meeting either one or two years ago where there was a change in the General Bylaw with regard to parking. He believed the determination was that you cannot park within the layout of the road. Chair Sollog thought that had to do with Route 6A and the Vineyard.

**Member Tosh made a motion in the matter of 2019-004/PB-Clinton Kershaw that if the Board grants a permit for an Accessory Dwelling Unit that the permit be conditioned on;**

- **The applicant obtaining the opinion of the Zoning Enforcement Officer that the existing parking for the Accessory Dwelling Unit is defined by the Zoning Enforcement Officer as off-street.**
- **If the Zoning Enforcement Officer determines that the existing parking is not off-street that the applicant will then move the parking onto the property or obtain a variance from the Zoning Board of Appeals.**

**Member Herridge seconded.**

Member Riemer stated that the Town's definition of street includes not just the travelled way but right-of-way as well. He asked Counsel if that meant that parking would need to be off the right-of-way, which is forty-feet wide. Chair Sollog stated that they were leaving that question up to the Zoning Enforcement Officer. Atty. Silverstein is uncomfortable with not giving the Zoning Enforcement Officer the first opportunity to make a determination about whether the parking complies. If there is a determination of non-compliance, then the applicant would have to deal with that. Member Kiernan stated that the parking plan revision dated May 10<sup>th</sup>, 2019 shows three proposed parking spaces on one portion of the property and two proposed parking spaces on another portion of the property. Currently the parking spaces are in the layout of Highland Avenue. He's asking if the Board is asking the applicant to move the spots or leave them in the road. Chair Sollog explained that they are not determining if the parking is illegal, they are leaving that determination up to the Zoning Enforcement Officer. Member Kiernan wants to be sure that's a condition so he can vote. Member Tosh explained the conditions to him for better understanding.

**So voted; 6-0-1 (Member Kiernan abstains), motion carries.**

**Member Kiernan made a motion in the matter of 2019-004/PB-Clinton Kershaw to grant a permit for an Accessory Dwelling Unit Permit pursuant to Section 40.2 of the Truro Zoning Bylaw. The property is located at 9 Highland Avenue, and in accordance with plans submitted with this application subject to the following conditions:**

- **Once an ADU has been added to a dwelling, structure, or lot, the ADU shall not be enlarged beyond the square footage specified in the permit granted, pursuant to Section 40.2 of the Truro Zoning Bylaw without first obtaining a subsequent permit from the Planning Board, and in no case shall an ADU be permitted to exceed the square footage allowed by Section 40.2 of the Truro Zoning Bylaw.**
- **The principle dwelling, and ADU and lot on which they are located shall remain in common ownership and shall not be severed in ownership including that the lot, buildings, or units thereon shall not be placed in a condominium form of ownership.**
- **Either the ADU or the principle dwelling on the lot with an ADU must be leased for a term of at least twelve months. Rental of said unit for a period of less than twelve months, including but not limited to, seasonal renting and rental through vacation rental services and websites**

is prohibited. Proof of year-round rental shall be provided annually to the Building Commissioner by the owner in the form of a lease and a signed affidavit from both the owner and renter stating the unit is being rented accordingly and is used as a primary residence.

- The ADU shall be inspected annually or as frequently as deemed necessary by the Health and Building Departments for compliance with public safety and public health codes. The owner of the property shall be responsible for scheduling such inspection and shall pay any applicable inspection fees.
- Prior to the issuance of the building permit, the owner of the property shall obtain approval from the Health Department under Title V of the State Sanitary Code and the local Board of Health Regulations as applicable.

**Member Boleyn seconded.**

Member Kiernan feels that the Planning Board is ignoring the part of the bylaw that says there shall be two off-street parking spaces in addition to parking otherwise required by the property for the ADU. Chair Sollog acknowledges his feelings.

**So voted; 5-2-0 (Member Kiernan and Member Riemer oppose), motion carries.**

#### **Board Action**

Discussion and possible Board vote of a full release from the Town of Truro "Form F – Certification of Completion & Release of Municipal Interest in Subdivision Performance Security" for Ladoyt K.

Teubner, et als, First Light Lane, Plan Book 573, Page 53, Covenant Book 15141, Page 179. The original Lot 1 (Plan Book 249, Page 56) has been subdivided into six (6) lots. Lots 4 and 5 conform to requisite frontage on Castle Road and therefore are not part of the Covenant. Lots 2, 3 and 6 have already been released in previous years by the Truro Planning Board.

Chair Sollog asked if the Board was satisfied that the subdivision was completed as shown on the plan. Member Kiernan was satisfied. Chair Sollog then asked if the Board found any problem with this particular subdivision. There were no problems.

**Member Kiernan made a motion that the Planning Board release the covenant.**

**Member Boleyn seconded.**

**So voted; 7-0-0, motion carries.**

Discussion and possible Board vote on Truro Center for the Arts at Castle Hill, Inc.'s request for a pre-submission review, pursuant to Section 2.3 of the Truro Subdivision Regulations for modification of a plan entitled "Modified Definitive Subdivision Plan of Land in Truro," made for Malcolm Meldahl, Trustee dated December 9, 2015, of record at Barnstable Registry of Deeds, Plan Book 662, Page 87.

Member Tosh recused herself and left the room as she is a member of the Board at Castle Hill and she is also a Trustee of the Truro Conservation Trust (which is an abutter).

Cheri Mittenthal and Don Poole approached the Board. Per Ms. Mittenthal, the existing subdivision plan for Edgewood Farm shows a "no construction" section of Edgewood Way, which is a section which was not intended to be built as intended because that section only serves Lots 1 and 2. Since then, they've purchased the property, and sold Lots 3 and 4 to the Truro Conservation Trust. The Truro Conservation Trust has no access to that subdivision section of the frontage. They are looking to see if they can remove the paper road. Member Kiernan asked Mr. Poole to show exactly what was planned. Mr. Poole brought the plan up to Members Kiernan and Herridge and pointed out the area they wished to be expunged. A discussion ensued suggesting including a turn-around in the layout of the road, they would then gain frontage. Mr. Poole stated doing so would violate setbacks and would require approval

through the Zoning Board of Appeals. Mr. Poole instead suggested that they do a paper cul-de-sac. They could dead-end the road at the site of no construction and do a paper cul-de-sac there. Atty. Silverstein reviewed the plan and stated that from a subdivision control standpoint, what they are proposing isn't an issue to the extent that exacerbates any existing zoning nonconformity they may need to go to the ZBA for a Section 6 finding. He says it's straightforward and can be done under Section 81W, and if it were to cause any zoning issues, that would be for the Zoning Board of Appeals to deal with.

Chair Sollog does not see a problem with them proposing a paper road change.

Member Tosh comes back to the room and re-joins the Board.

#### **Discussion and approval of updated Truro Zoning Bylaw amended through April 2019.**

Member Kiernan stated that it has to be certified by the Town Clerk. Chair Sollog stated that it was submitted to the Board to make sure it was inclusive of everything to date. Interim Planner Bardi stated that member Greenbaum pointed out a few clerical issues that they can take out now, but any substantive would need to go through Town Meeting. Tonight, is for the Board to sign off to get it certified at the clerk's office and posted online for the public. The Board went over the clerical issues Member Greenbaum noticed.

Member Riemer went through some inconsistencies he noticed with the Board. He would like those inconsistencies worked on. Chair Sollog agreed that there are some items which they need to be sure are included. Member Greenbaum thinks they should take the time to continue to review and bring changes to the next meeting.

#### **Discussion and approval of updated Planning Department forms for applications before the Board.**

Chair Sollog suggests to the Board that they use the forms included in their packet, review and make notes so that they can discuss at the next meeting.

#### **Discussion for setting date for Board public workshop.**

Chair Sollog wished to speak to the Select Board liaison to the Planning Board about a possible joint meeting. Besides a workshop, a possible workshop with join boards would be a good concept. Member Greenbaum believes the Planning Board should have their own work session before holding a joint work session with the Select Board. Chair Sollog agrees. A date of August 6th was suggested.

Member Kiernan wished to ask Atty. Silverstein a question. He has seen members of other Boards get up to speak at meetings, state that they are a member of a certain Board, but then announce they are speaking as a private citizen. After that announcement, Member Kiernan feels that some people then say some inappropriate things. All Board, Committee, Commission members must sign Policy #54, which dictates standards of professional conduct. Member Kiernan would like to know, if you want to speak as a private citizen must you resign from your position on a Board, Committee or Commission. Atty. Silverstein answered that he doesn't want to answer that question, in that format, in a blanket fashion, however as a general rule being a member of a town board doesn't mean that you give up your first amendment rights to speak on any matter that you choose. To speak on behalf of a board, unless you've been tasked to do so, would not be right.

#### **Approval of Minutes**

**June 28, 2019 Minutes of Site Visits for First Light Lane and 40 Cliff Road.**

**Member Tosh made a motion to approve the June 28, 2019 minutes of site visits for First Light Lane and 40 Cliff Road.**

**Anne Greenbaum seconded.**

**So voted; 7-0-0, motion carries.**

Chair Sollog announced that the next meeting would be Wednesday, August 14, 2019 at 6:00 pm.

**Member Kiernan made a motion to adjourn.**

**Member Herridge seconded.**

**So voted; 7-0-0, motion carries.**

Meeting adjourns at 9:42 pm.



**Respectfully Submitted,  
Noelle L. Scoullar**

