

TOWN OF TRURO
Planning Board
MEETING MINUTES
July 22, 2020
TRURO TOWN HALL

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

Others Present: Town Planner-Jeffrey Ribeiro, Atty. David Reid, Bill O'Brien, John O'Reilly, Atty. Barbara Huggins-Carboni

Chair Greenbaum called the meeting to order at 6:08 pm. Town Planner Ribeiro read off instructions on how people could join the meeting to listen or provide comment.

Public Comment Period:

Mr. Bill O'Brien lives on Sawyer Grove Road and he heard that 2020-001/PB had been removed from the agenda. He wanted to know if that were true, and if so, did the Board have the capacity to have a discussion once an item was withdrawn? Town Planner Ribeiro stated that about an hour prior to the meeting they did receive a request to withdraw from the applicant. He does not expect to have any substantive discussion of the case or the project. The Board will discuss the request to withdraw.

Member Riemer stated he was having trouble hearing the comments and asked if anyone else was having difficulty. It was determined it was on Member Riemer's end. He stated he had a document which was distributed to the Planning Board from the Woods Hole Group and signed by Town Manager Palmer. Within the Chapter 91 application there are provisions to be signed off. He would like the Board to be aware that he is not aware of any action that's been taken on this and it should be scheduled on an agenda to ensure the Board has complied with what's been asked for. Town Planner Ribeiro said that the actions have been taken and the appropriate form was signed by him. It was then sent to the Board as that's the requirement. The Board can send comments to the DEP if it so chooses. Member Kiernan asked that the form being referenced be sent to him.

Public Hearing-Continued

2019-006/PB – Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer seek approval of a Preliminary Subdivision Plan of Land, pursuant to G.L. c. 41, §81S and §2.4 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at Route 6 and Amity Lane, Truro, MA, Map 46, Parcel 8.

Member Tosh announced that she needed to recuse herself. Since the meeting was taking place virtually, she would mute the sound and Chair Greenbaum would motion to her when the item under discussion was done.

Chair Greenbaum stated that after their last meeting, they had a motion with some conditions in it. She asked if there was any discussion of the conditions listed. Member Riemer asked if all abutters had been notified? Town Planner Ribeiro said that a subsequent notice was mailed to let people know that they were restarting the hearing process. Member Riemer noted that the preliminary plan was not signed or stamped. Town Planner Ribeiro stated that they will need John O'Reilly to submit the signed, stamped

preliminary plan. Chair Greenbaum asked if that should be included in the conditions. Atty. Huggins-Carboni suggested that someone go over the conditions for the public.

Town Planner Ribeiro gave a summary of how the Applicant has been working with the Truro Conservation Trust to donate land. This is a Preliminary Plan, so the Board will come back to review a Definitive Plan. The proposal is to create a subdivision with no intention to ever build it. It creates 1 lot that meets zoning requirements and 1 unbuildable lot that lacks frontage. The proposed language before the Board seeks to provide protection to the Town and the Board. Mr. O'Reilly stated that the findings and conditions were sent to Mr. Schirmer and Mr. Schirmer was fine with them all.

Chair Greenbaum proceeded to read the findings and conditions.

The Board makes the following findings:

1. The Plan shows Lot 3, containing an existing single-family house, with frontage on the depicted Amity Lane and unnamed "Way"; Lot 4, vacant, with frontage on the unnamed "Way"; and Lot 5, which lacks frontage on any way and is not a buildable lot.
2. The Applicant represents that Lots 4 and 5 will be conveyed to the Truro Conservation Trust.
3. The Applicant represents that neither will Amity Lane be improved nor will the unnamed "Way" be constructed until such time that Lot 4 is improved by a residence.
4. The Applicant represents that the trees identified by the Truro Fire Chief for removal as shown on the plan will be removed prior to application for a Definitive Subdivision of Land.

The Planning Board approves the preliminary plan subject to the following modifications and conditions:

1. Lot 5 shall be labelled "not a buildable lot".
2. At such time that Lot 4 is improved by a residence, Amity Lane and the unnamed "Way" shall be constructed in conformance with the Planning Board Rules and Regulations Governing the Subdivision of Lane.
3. Any further subdivision of land depicted on the Plan, or division of such land pursuant to G.L. c. 41, s. 81P shall require a modification of this subdivision plan.
4. The preliminary subdivision plan must be a stamped and signed copy.

Member Riemer would like to see recognition of the Town of Truro General Bylaw 1-9-13, Public Safety Clearing Guidelines. Chair Greenbaum stated that the Fire Chief has weighed in and said that with those trees removed, he's comfortable with it. Town Planner Ribeiro gave some background on this item. Member Riemer would like the Fire Chief to acknowledge in his review of the road that he also took into consideration the specific requirements of this General Bylaw. Town Planner Ribeiro will look into that.

Member Riemer asked what guarantees does a future Planning Board have with regard to an ANR application going forward with any approvals they may agree to? Mr. O'Reilly said that if you look at condition #3 it qualifies two types of plan that comes before the Planning Board; a subdivision and an 81P. An 81P is an ANR plan. Condition #3 prohibits anyone in the future of Lot 3 coming in and doing an ANR to skirt the issue of the access road. Member Riemer does not feel satisfied. Chair Greenbaum asked Atty. Huggins-Carboni if she agreed with Mr. O'Reilly's read of condition #3. Atty. Huggins-Carboni stated that condition #3 builds in the protection against unanticipated development.

Member Kiernan stated that at the last meeting he asked Town Planner Ribeiro if he could get an assurance from the Fire Chief in writing and asked if that had been received. Town Planner Ribeiro said that the Fire Chief's concern was having the trees removed and if no new development was to happen there, he was alright with the proposal. Atty. Huggins-Carboni suggested adding a condition that would require written determination by the Fire Chief either now, at the time of any further development, or at the time of the definitive subdivision plan. Member Kiernan stated that the traveled "Way" that is

currently being used to access different properties does not exist, in part, within the legal way of the road. It travels onto private property. He wanted to know if that was a problem? Atty. Huggins-Carboni explained that it was not a problem for purposes of the preliminary plan and suggested that they could add a condition about clarifying ownership and rights in the "Way". Mr. O'Reilly believes that Mr. Schirmer told the Board that he and his family owns the rights within Amity Lane.

Member Kiernan is uncomfortable with the existing roadway because it is built to no standards. He does not want to blindside anybody here, but it seems to him that this is their last chance to make that safe before it passes into other's hands. At the same time, the Zoning Bylaw requires certain things before a road can be used for frontage. He understands that this is a very generous gift of land.

Member Riemer reiterated that the Board has requested that the Fire Chief review the public safety clearing guidelines, and in addition the Police Chief and DPW Director should review this as well. Town Planner Ribeiro said that they do have a letter on file from DPW Director Cabral stating that he has no concerns and sees no concerns over the impact of the proposal on any Town infrastructure. He can certainly get written comment from the Fire Chief later on. Member Riemer would like the letters to incorporate that their approval is an awareness of the public safety clearing guidelines. Chair Greenbaum would like this to be part of the definitive subdivision conversation.

Member Sollog made a motion to approve the application for case 2019-006/PB by Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer requesting approval of a Preliminary subdivision plan based on the following specific findings and subject to the following conditions:

The Planning Board has reviewed the preliminary subdivision plan submitted by the applicant pursuant to G.L. c. 41, s. 81S, identified as on the plan titled *Preliminary Subdivision Plan of Land in Truro, Massachusetts for Abigail B. Schirmer, Audrey Schirmer, and Joseph M. Schirmer at 1 Amity Lane, Truro, MA*, prepared by J.M. O'Reilly & Associates, Inc., dated 9/9/2019, as revised 7/15/2020.

The Board makes the following findings:

- 1. The Plan shows Lot 3, containing an existing single-family house, with frontage on the depicted Amity Lane and unnamed "Way"; Lot 4, vacant, with frontage on the unnamed "Way"; and Lot 5, which lacks frontage on any way and is not a buildable lot.**
- 2. The Applicant represents that Lots 4 and 5 will be conveyed to the Truro Conservation Trust.**
- 3. The Applicant represents that neither will Amity Lane be improved nor will the unnamed "Way" be constructed until such time that Lot 4 is improved by a residence.**
- 4. The Applicant represents that the trees identified by the Truro Fire Chief for removal as shown on the plan will be removed prior to application for a Definitive Subdivision of Land.**

The Planning Board approves the preliminary plan subject to the following modifications and conditions:

- 1. Lot 5 shall be labelled "not a buildable lot."**
- 2. At such time that Lot 4 is improved by a residence, Amity Lane and the unnamed "Way" shall be constructed in conformance with the Planning Board Rules and Regulations Governing the Subdivision of Land.**
- 3. Any further subdivision of land depicted on the Plan, or division of such land pursuant to G.L. c.41, s. 81P shall require a modification of this subdivision plan.**
- 4. A stamped and signed plan shall be submitted.**

Member Herridge seconded.

Member Kiernan asked if all the trees that are to be removed located on Schirmer land or are some on private property? Town Planner Ribeiro stated that the trees to be removed are either on the parcel still owned by the Schirmer's or within the Amity Lane layout which the Schirmer's retained full rights within the way.

So voted;

Member Sollog-Aye

Member Riemer-Aye

Member Boleyn-Aye

Chair Greenbaum-Aye

Member Kiernan-Abstained

Member Tosh-Recused

Member Herridge-Aye

5-0-2 (Member Kiernan Abstained; Member Tosh Recused), motion carries.

2020-001/PB-Nathan A. Nickerson III seeks approval of a Definitive Subdivision Plan of Land, pursuant to G.L. c.41, §81T and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 4-H Bay View Road and 3 Laura's Way, Truro, MA, Map 39, Parcels 77 and 325.

Town Planner Ribeiro explained that this is a subdivision that the Planning Board received at the beginning of the year. There was a previous proposal that was submitted and then withdrawn due to a procedural error on the Applicant's part. He then proceeded to give a summary of the proposal.

Chair Greenbaum noted that 6 members of the Planning Board as well as Town Planner Ribeiro and Atty. Huggins-Carboni did a site visit.

Town Planner Ribeiro continued, stating that the Applicant sent an email right before 5:00pm saying that they wished to withdraw the application from consideration. He thinks it would be appropriate for the Board to accept that request. The Applicant may want to come back with a different proposal, but that's unclear at this time.

Member Riemer reviewed the Planning Board minutes dated June 12, 2007 referencing application number 2007-008 which represents what they are again confronted with today. He would like all the Boards to have a chance to read these minutes to consider how they want to approach the Applicant's request. Chair Greenbaum asked Member Riemer to clarify whether this was to consider the Applicant's request to withdraw or the Applicant's overall request. Member Riemer asked, "Do we want to accept his request with prejudice or without prejudice?" Atty. Huggins-Carboni gave the Board two different options.

Member Tosh asked, if the Board denies the request to withdraw, and then they have the hearing and deny the project, is the project then dead forever or is it dead for 2 years and they can come back and apply again? Atty. Huggins-Carboni stated that it's the latter, or they can appeal the denial. If it's withdrawn without prejudice, the Applicant can come back at any time. If the Board does not accept the request to withdraw, then the Board can hold a hearing on the project, the Board can deny it, which will give the Applicant the option to appeal it or to come back in two years.

As Member Herridge recalls, this was originally a dead-end road, more than 1,000 feet long. The additional development got approved in a suspect manner and he would think they would not want any more development back there.

Member Riemer asked, if the Board was to deny the Applicant's request and open the public hearing, would they then seek to develop findings of fact that would support a denial of the application? Atty. Huggins-Carboni stated that the Board would hold a public hearing on the application and the record would develop as it develops. Member Riemer said that 13 years have elapsed. He would like to leave a clear message for future Boards that might be looking at this same proposal 10 years down the line, as to what the facts were that determined their concern.

Member Riemer reviewed the packet which included extensive stormwater runoff calculations, and he reviewed the Board of Health comments. If this is to go forward, he would suggest hiring a consultant to look at the engineering that was provided to them.

Member Sollog states there is a dilemma of allowing a withdrawal that permits the Applicant to reconfigure or find a different Board (as Board members do change). He may prefer to allow the withdrawal and trust the Boards in the future to discern this possible return of the Applicant.

Member Kiernan sees merit in both sides, but feels it is not a repetitive application. It has substantially changed. He is not in favor of blocking the withdrawal due to a repetitive action. The facts will remain the same. He wished to remind the Board that if the Applicant takes it to court, the Planning Board has no reason to expect that the Select Board would back them up. He is not overly excited about not giving the Applicant his withdrawal.

Member Riemer would like to give recognition to the letters that were written to the Planning Board from members of this subdivision expressing serious concerns over a wide range of topics. Chair Greenbaum stated that the letter would be part of the application going forward. Atty. Huggins-Carboni also suggested that the letters could be attached to the minutes. Member Riemer liked the idea of attaching the letters to the minutes.

Member Boleyn attended the site visit today. With all the continuances, the staking out was not improved at all and he senses a lack of cooperation. He would subscribe to accepting the request to withdraw the application without prejudice.

Member Boleyn made a motion to accept the request to withdraw the application without prejudice.
Member Kiernan seconded.

So voted;

Member Herridge-Nay

Member Kiernan-Aye

Member Tosh-Nay

Chair Greenbaum-Aye

Member Boleyn-Aye

Member Riemer-Nay

Member Sollog-Aye

4-3-0, motion carries.

**Board Action/Review
Election of Officers**

Member Kiernan made a motion to nominate Anne Greenbaum as Chair.

Member Riemer seconded.

So voted;

Member Kiernan-Aye

Member Boleyn-Aye

Member Herridge-Aye

Member Riemer-Aye

Member Tosh-Aye

Member Sollog-Aye

Chair Greenbaum-Aye

7-0-0, motion carries.

Chair Greenbaum made a motion to nominate Karen Tosh as Vice-Chair.

Member Herridge seconded.

So voted;

Member Sollog-Aye

Member Riemer-Aye

Member Boleyn-Aye

Chair Greenbaum-Aye

Member Kiernan-Aye

Member Herridge-Aye

Member Tosh-Abstained

6-0-1, motion carries.

Member Kiernan made a motion to nominate Jack Riemer as Clerk.

Member Herridge seconded.

So voted;

Member Herridge-Aye

Member Kiernan-Aye

Member Tosh-Aye

Chair Greenbaum-Aye

Member Boleyn-Aye

Member Riemer-Aye

Member Sollog-Aye

7-0-0, motion carries.

Chair Greenbaum would like to skip the next item on the agenda and come back to it after the next discussion.

Review of the effect of Section 50.2 of the Zoning Bylaw upon the Town of Truro to submit a report to the 2021 Truro Annual Town Meeting.

Chair Greenbaum stated that Administrative Assistant Liz Sturdy caught the fact that the Planning Board is supposed to provide the 2021 Annual Town Meeting with a report regarding the impact of the Residential District House Size Bylaw. She requested that Member Kiernan work with her on that.

Member Kiernan agreed. They will work on this and come back to the Board with thoughts about how they can do it.

Review of the Cloverleaf Truro Rental Housing Comprehensive Permit application under MGL Ch. 40B to formulate comments for submittal to the Zoning Board of Appeals.

Chair Greenbaum sent the Board very early draft documents, one being about their next round of feedback, and the other which was responses to the revised waivers. She then asked if the Board wanted to have some conversation or did they want to set up a work session? General agreement by the Board was to meet for a work session. A work session was scheduled for Monday at 2:30pm.

Member Riemer had read an article in the Provincetown Independent which stated that due to the extension beyond the end of the month the Cloverleaf project would not qualify for funding in this quarter, and for this reason would be moved into the next quarter. He asked Atty. Huggins-Carboni if that was the case. Atty. Huggins-Carboni stated she would have to speak to the Applicant about that. Town Planner Ribeiro said that the low-income housing tax credits are usually handed out on an annual basis. Mini rounds are now being done, which occur every 6 months. He thinks the expectation is that because the Zoning Board approval is not in hand, the project will not be funded in the mini round which is now (the August round). It will be placed in the November round.

Member Herridge made a motion to adjourn at 8:00pm

Member Boleyn seconded.

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



**Respectfully Submitted,
Noelle L. Scoullar**

