

TRURO PLANNING BOARD

Meeting Minutes

December 17, 2014 - 6:00 pm

Truro Town Hall

Members Present: Leo Childs, Bruce Boleyn, Chris Lucy, and Steve Sollog, William Worthington and Lisa Maria Tobia

Members Absent: Michael Roderick

Other Present: Charleen Greenhalgh ATA/Planner

Mr. Childs opened the meeting at 6:02pm

2014-004PB Sprint Spectrum, L.P. (CCATT LLC), Special Permit, 344 Route 6

Mr. Childs explained that this was a continuation from the November 18, 2014 meeting. The hearing was continued to this evening; however the applicant has requested a continuance to January 6, 2015. On a motion from Mr. Sollog, seconded by Mr. Boleyn the hearing was unanimously voted to continue the hearing to January 6, 2015.

Follow-up Discussion on Board of Selectmen action on the Development Agreement Bylaw

Mr. Childs and Mr. Lucy updated the Board on the discussion that transpired at the Board of Selectmen meeting the previous evening. The Board of Selectmen did have some questions and concerns. The Board also reviewed the correspondence from Jon Idman at the Cape Cod Commission, which was a result of questions asked at the Selectmen's meeting. The answer to the second question is not correct. The question was whether the town could refer a discretionary referral back to the town for review as a Development Agreement. The answer should be no. Mrs. Greenhalgh also informed the Board that the Development Agreement provision under the Cape Cod Commission was updated in November, so some minor changes would also be needed within the draft bylaw. After a lengthy discussion it was decided that the Board would like to invite Mr. Idman to the Jan. 20th meeting and invite the Board of Selectmen to attend. Mr. Lucy discussed the addition of the Town Meeting vote being required as part of the process that would need to take place before the Board of Selectmen could sign-off on a negotiated Development Agreement. The Selectmen appeared to be in favor of adding this provision. Ms. Tobia was supportive. Mr. Worthington has some reservations, but is willing to go along with it. Mr. Lucy discussed the fact that by the time it got to the Town Meeting, there would be a lot of public hearings and he would hope that there would be support at the time of Town Meeting. Mr. Lucy will provide the language to Mrs. Greenhalgh. Mr. Sollog asked exactly what the Development Agreement means. It is for local review of projects that would otherwise trigger Cape Cod Commission review. Mr. Lucy provided an example: 30 acre parcel to be subdivided, under the CCC 50% would be required to remain open space, 10% as affordable housing. Under the Development Agreement Bylaw, the town would have local review to work with the developer to come up with a plan that would be beneficial to the town. A lengthy discussion ensued. Mr. Sollog cautioned that this is a difficult document to read and he wants to be sure that the public understands what this really means. It was the consensus of the Planning Board to include the Town Meeting language.

Continued Planning Board Discussion on Definition of Street and Frontage

Draft language was provided by Mr. Worthington. He explained that definitions are not the place to put regulations. The regulations should be placed somewhere else in the bylaw. His draft provides for this. He created a brief definition of street or road: "Street, Road - A way by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations

Streets and roads may be private, owned by the abutters or others, or public, owned by the Town, County, or Commonwealth.”

He also created a table for regulations – a new Section 30.11.

Section 30.11 Streets, Roads and Frontage

- A. Purpose: It is the intent of this section to provide the requirements of streets and roads in Truro in order to qualify as adequate for the Building Commissioner to provide a permit for construction or modification of structures on property abutting an existing private road.
- B. Applicability: Certain roads are assumed to qualify as adequate and can be developed by right, within the limits of the Health Code and set-back requirements of the zone. Such adequate roads are also either a) public roads or roads which the Town Clerk certifies are maintained and used as a public way; b) ways that have been approved and endorsed in accordance with the subdivision control law; or c) roads that were in existence on December 8, 1955.
- C. Characteristics of adequate Private Streets and Roads

Number of lots on Road	1 - 5	6 – 10	11 – 20	21 or more
Minimum Roadway Width	14 feet	18 feet	20 feet	22 feet
Maximum Grade	12 %	10 %	8 %	8 %

Adequate private roads must present no impediments to emergency vehicles such as Fire and Medical response equipment. The written opinion of the Fire Chief or Chief of Police can be accepted by the Building Commissioner on issues of vehicle access if necessary.

Mr. Worthington provided for consistency between the Subdivision Regulations and the Zoning Bylaw. No change is proposed to the definition of Lot Frontage; however he did include draft language about “usable” frontage. He provided examples of properties that have frontage on one road; however the actual access is over somewhere else (another road or driveway). Mr. Childs agrees that the regulations/specifications should not be included in the definition. Mr. Worthington was also trying to focus on what the Building Commissioner has said and what he will need. Mr. Sollog agrees that the separation is good and is appreciative of the work that Mr. Worthington has done.

Mr. Lucy asked about roads within the Seashore and who owns them. He asked if the Federal Government should be included in the draft definition as it addresses town and state roads. Mr. Childs said that it depends, as for example some portions of Old Kings are owned by the abutters and some portions are owned by the Seashore. Mrs. Greenhalgh suggested shortening the definition to state: “A way by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations. Streets may be private or public.” Mr. Worthington was comfortable with the change. A brief discussion ensued about roads within the Seashore and who has the right or obligation to maintain the road for safety purposes. If a road is connected to a building permit, the Building Commissioner has the right to enter onto properties within the Seashore Boundaries.

The Board then turned to the proposed language address in the draft 30.11. Mrs. Greenhalgh stated that this is a very good starting point; however some of the wording would not fly as far as wording

for a zoning bylaw. She suggested that rather than word-smithing at this meeting, she would be happy to work on the draft. The Board and Mrs. Greenhalgh provided some key suggestions. Health code does not need to be included. Mr. Lucy spoke to a number of roads that existed prior to December 8, 1955 (Old Kings Hwy, for example); based on the draft language, would it then not make all roads adequate. There are also a number of “roads” that are not actual streets. They were not laid out or approved and they did not exist prior to 1955. For roads that did exist prior to Dec. 8, 1955, the key question is, do they provide for safe and adequate access for additional development.

Old Kings Highway for example has a varied width throughout the entire length and has approximately 20 houses, plus a couple of subdivision roads off of it. Base on the draft language in Section C, the road width would need to be 20 or 22 feet. Is that what is really desired. Also, what is meant by the 20 feet wide, is this the improved surface width or does this include cleared shoulders. Ms. Tobia suggested that what she sees missing is the historic aspect of some of the roads. These roads cannot meet the standards proposed. Mrs. Greenhalgh reminded the Board what the purpose of the zoning bylaw is, “protection of the health, safety and welfare of the inhabitants and visitors.” On some of these older roads does the town want to allow or promote further development if a road does not provide for safe and adequate access? Ms. Tobia expressed that the most important aspect is for emergency vehicles. Perhaps some sort of asterisk for the historic road with an absolute minimum requirement should be included. There will be some roads where there will not be the ability to pass or even pull off a road; but if there is a sign-off from the Police and Fire that a road provides for a minimum safety requirements that perhaps that will be all that is necessary. For Ms. Tobia, this is a continuing concern relative to historic roads. Perhaps there are specific roads which would be included on a list that would have a historic aspect and would then meet minimum standards.

Mr. Childs stated that it still comes down to some entity’s opinion as to a road being safe and adequate; MGL currently gives that ability to the Planning Board. Currently as written, it is in the opinion of the Zoning Board of Appeals. For a variance there needs to be a finding that there is a hardship related to the soil, shape or topography of a lot, it speaks nothing to the road. In the draft provided by Mr. Worthington, Mr. Childs pointed out that it would be in the opinion of the Police Chief or the Fire Chief. It comes down to whom does the town want to make this determination? Mr. Childs referred to the two memos from the Building Commissioner. In the first memo from August he suggested that the definition should be kept simple; however after thinking about it, in his November memo the Building Commissioner suggested that there needs to be standards and someone needs to make a determination. Mr. Worthington explained that the determination is not left to volunteer boards, but rather to professionals – Fire Chief and Police Chief. Ms. Tobia expressed that it is not just an opinion of the Chief; but rather it needs to be ascertained that a fire truck or ambulance can actually access the road safely. It’s an opinion, but based on fact. Mr. Childs reiterated that the MGL provision is included in a number of other Town’s definitions of street; it is the Planning Board determination. The Board can certainly use the guidance of the Chiefs when making an opinion or determination. Mrs. Greenhalgh suggested that the Board does that now with subdivision roads. Mr. Childs expressed that what people have a difficult time with is the language “in the opinion of the Planning Board.” He does not understand why this is a problem. Ms. Tobia expressed that if there were criteria in which to base an opinion, it would be more acceptable as there would be more consistency. Mr. Lucy expressed that the reason the State Law is so general, is that each road is determined case by case – it’s historic aspects, the steepness of grades, wetland issues, etc. One set of rules cannot work for every road, thus the need for more generalization, which people don’t like.

Mr. Lucy continued that the Zoning Board of Appeals would need to make the determination that it is not more detrimental and under zoning there are no precedents, so one property on a road could receive approval, while another property may not. If the Planning Board was to review a road, it can make a determination that the road is adequate up and including a particular property, because it is reviewing the road; however, the Zoning Board of Appeals can only look at the property in question and not the road itself. Mr. Lucy also stated that the Planning Board is elected, so if townspeople are not happy with the Board's actions, they can be voted out. The Zoning Board of Appeals is appointed and he does not recall that anyone has been removed from an appointed board.

The question was asked, what triggers the proposed bylaw to go before a particular board? Mrs. Greenhalgh explained that under the current existing definition and under this proposed language, the Zoning Board of Appeals would be the entity to have responsibility for review. Mr. Lucy asked how it would come to the Planning Board. The response was that it would have to be written into the bylaw that it would go to the Planning Board.

Mrs. Greenhalgh expressed her concern about substandard roads, using Old Kings Highway as an example. If there is a 10 acres parcel that could be developed on Old Kings Highway, it is incumbent upon the Planning Board to make a determination that not only is the proposed subdivision road designed to provide for safe and adequate access, but also that that portion of Old Kings Highway to the main road (Higgins Hollow) must provide for safe and adequate access for the increased traffic. The Planning Board has the right to require that the applicant demonstrate with engineered plans how Old Kings Highway would/could be improved to meet particular standard. The applicant has the ability to present to the Planning Board what that standard is, as the Planning Board has the right to waive the road construction standards. The board has the right to do this under the Subdivision Control Law. Mr. Worthington stated that it would be difficult to have all the abutters agree to allow for the improvement to Old Kings Highway. Mrs. Greenhalgh explained that that is not a matter for the Planning Board, as the Planning Board is only telling the applicant to what standard improvements have to be made, not that the applicant has the permission to do so. The applicant has to figure out how to improve the road and if they cannot, they cannot build the subdivision road.

The Building Commissioner and/or the Board of Appeals (under the proposed bylaw) would have the right to determine if a road is adequate for a proposed addition, but it may come to a point where the road is no longer safe and adequate if it has not been required to be improved. Mrs. Greenhalgh cautioned and suggested that if there are different entities determining that a road provides for safe and adequate access it could lead to problems. Mr. Worthington expressed that under the Subdivision Control Law, the Planning Board makes that determination. Mrs. Greenhalgh agreed and stated that in her opinion and with her 27 years of experience as a Planner it is the Planning Board that should be making the determination about the adequacy of roads. She explained that she would be remiss in her duties as the Town Planner not to express this; but that if the Board decides to go in a different direction, she will prepare the necessary documents at the direction of the Board. She understand that there will be people watching this on Truro TV later who may condemn her for making these comments; however she stated that she would be remiss in her duties as Planner if she did not.

Ms. Tobia suggested there needs to be a highest minimum for the Police and Fire Departments to be satisfied with the access. There currently is a town general bylaw that defines minimum standards, but it does not include grades. Ms. Tobia suggested continuity between the two documents, but

include grades, so that the Police or Fire would have minimum requirements for sign-off. Police and Fire have commented on previous subdivisions that have been before the Planning Board.

The Board continued to review the draft document presented by Mr. Worthington. The widths will be reduced by 4' each. It was the consensus of the Board that Mrs. Greenhalgh will work on the document and it will come back to the Board.

Continued Review and Discussion of Agriculture related Definitions

David DeWitt from the Agricultural Commission was unable to attend. The discussion will be continued to the next meeting.

Review and Approval of Meeting Minutes:

On a motion from Mr. Worthington, seconded by Mr. Boleyn, the Board voted 5-0-1 (Mr. Lucy abstained) to approve the November 18, 2014 meeting minutes as written.

Adjourn

Adjourned at 7:47pm

Respectfully Submitted,

Charleen L. Greenhalgh
ATA/Planner