

TRURO PLANNING BOARD

Meeting Minutes

January 20, 2015 - 6:00 pm

Truro Town Hall

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

Selectmen Present: Jay Coburn, Chair, Bob Weinstein, Jan Worthington and Maureen Burgess

Other Present: Charleen Greenhalgh ATA/Planner, Rae Ann Palmer, Town Administrator, John O'Reilly, David DeWitt, Kevin Grunwald, Jonathon Idman and Regan McCarthy

Mr. Childs opened the meeting at 6:02 pm

2015-001 Tomas & Francine De Franco Approval Not Required Plan, 8 and 8A Sandpiper Ave.

Representative: John O'Reilly

The applicant seeks endorsement of a 1 lot ANR Plan (consolidation plan) for property located at 8A & 8B Sandpiper Avenue, Map 35, Parcels 28 and 127. Mr. O'Reilly explained that he has revised plans with the correct date of 2015. The property is to properties. They wish to construct a single family dwelling; however the BC wanted to see the line removed for zoning purposes. The lot area meets the area and frontage requirements. Mr. Childs asked about the history of the parcel, as it is a strange configuration. Mr. O'Reilly explained the history. There were no other questions from the Board Members. Mr. Sollog move to endorse the plan, seconded by Ms. Tobia, so voted unanimously 7-0-0.

Development Agreement Bylaw discussion with Jon Idman, CCC Chief Regulatory Officer

Representative: Jonathon Idman, Chief Regulatory Officer with the Cape Cod Commission (CCC). Discussion with the Planning Board and Members of the Board of Selectmen on how Development Agreement Bylaws work. A Development Agreement Bylaw is authorized under the Cape Cod Commission, Chapter D, Development Agreement Regulations Governing the Provisions for Development Agreements, Barnstable County Ordinance 92-1, and (Revised November 2014). Mr. Coburn called the Board of Selectmen meeting to order at 6:10pm. Mr. Childs explained that the bylaw has once been a bylaw in the Town, but was left out when the bylaw was recodified.

Mr. Idman explained what a Development Agreement (DA) is. It is a contract agreement between the permitting authority and a developer for developer to provide public benefits and improvements, such as affordable housing, infrastructure, open space, etc.) in exchange for predictability in identifying project, such as extended duration to obtain permits and construct project (phased projects) or freezing of regulations in place at time the DA is entered into. The CCC has the right to enter into a DA as an alternative to Commission Development of Regional Impact (DRI) of a project. CCC Act and regulations allow a town to enter into a DA as a party with the CCC and a developer, if a DRI review is required and without CCC involvement if no DRI review is required. If a town adopts a LCP, which is certified by the CCC, and the town adopts the DA bylaw, then the Town can enter into a DA without the CCC. Requires a public hearing process. There is a model bylaw available.

As an alternative to the DRI review, the CCC first has to find that a project will benefit from and is appropriate for a DA. It is usually large and multi-phased projects, such that regulation freeze and extended duration, regular permitting of projects is necessary and desirable. A DA will set out the

duration, permitted uses and other developer considerations, restrictions and obligations. It allows for coordinated planning approach and mitigation schedule, especially in terms of infrastructure. Mr. Idman emphasized that as described in the CCC DA regulations and model bylaw, Town can enter into a DA with a developer for projects approval with the CCC for non-DRI projects. Barnstable is a town which has done this. Freeze, extended duration, zoning variances by way of Town Meeting approval.

Mr. Worthington asked if the Stop & Shop project and the Tradesmen's Park project would have triggered this. Per Mr. Idman, Stop & Shop would probably not have been a DA as it would not have been a phased project. Tradesmen's Park went through a different type of DRI. Mr. Roderick asked how many projects there would be on this caliber for Truro. Mr. Idman was not sure, but would not think there would be many. Mr. Lucy asked if a subdivision would be seen as a phased project. Per Mr. Idman, the subdivision itself is not phased; it is the construction of the dwellings that could be. Mr. Lucy gave a scenario of a 50 acre parcel. Mr. Idman explained that 50 acres would trigger the DRI and it would have to meet the CCC regulations under the Regional Policy Plan (RPP), as well as local requirements. Mr. Lucy asked if the 50% open space is always required. Per Mr. Idman, in some instances it is more than 50%. Mr. Lucy expressed that back in 2002 the Town was told that the open space could be used for other types of uses. Mr. Idman explained that the Massachusetts Energy & Environment Agency (EEA) gets involved with conservation restriction, as to what would be allowable and what would not. Agricultural restrictions could also be allowed. The DA has to work with the Local Comprehensive Plan (LCP), per Mr. Childs. Mr. Idman reviewed this. Mr. Coburn stated that the LCP has not been updated in 10 years and the RPP is currently being updated.

Ms. Worthington asked for examples of phased projects. Per Mr. Idman, Red Jacket Inn in Yarmouth and Cape Cod Health Care Center in Hyannis. Mrs. Burgess asked how many towns have DA. Per Mr. Idman, about 7 towns. The Town of Barnstable has a DA where the town has entered into agreements without the CCC. Mrs. Burgess asked that if a developer wished to pursue a project in Truro as a DA, it would go to the Building Commissioner to make the determination as to whether it triggers a DRI; it would then be referred to the CCC. The project would still need to go through either a DRI or DA through the CCC. Mr. Weinstein asked if the repurposing of buildings would trigger a DRI review or have a phased project. Per Mr. Idman, this would also include real property.

Mr. Coburn asked about the process of what triggers DRI. Mr. Idman explained that there are two types. Mandatory Referral, there is a list of triggering mechanisms. Once the Building Commissioner or Planning Board refers a project to the CCC all local time tables stops. Mr. Idman explained that the most intense review is whether the project meets the requirements of the RPP. A type of standard under water resources is nitrogen loading standards. The project is reviewed by and through all RPP standards and requirements. He spoke to the Lowes project in Dennis, which met the RPP standards; however it was ultimately found to not be in the best interest of the community. Mr. Coburn expressed that one of the concerns he has is the capability of the town staff to be able to review such projects. The second type of referral is a discretionary referral where a project can be referred for review under specific aspects of the RPP (Traffic, Water Resources, etc.)

As a practical matter, Mr. Idman does not see the types of projects that would trigger a DA in Truro. He did express that technical services are also available through the CCC staff. Ms. McCarthy provided a scenario of a project, and asked how this stops the local processes of the town and how

abutters and others who are interested get involved. Mr. Idman explained that there is a public hearing process for DRI review. The Town and abutters are notified as are neighboring towns. Mrs. Greenhalgh expressed that Town Staff still has the opportunity to review projects and the CCC staff reaches out to Town staff for input. Per Mr. Idman explained that projects would still need to come back to the town boards (after DRI approval) for final approvals and permitting. Under a DA it would eventually come back to the Town through the Board of Selectmen for approval. The public would have a say through the public hearing process whether the DA is through the CCC or the Town level.

Mr. Lucy asked if there is a down side to adopting this. Mr. Idman does not see one, especially in light of the fact that it had once been on the books. Mr. Coburn is still struggling to understand why this is something that needs to get completed. What problem is this going to solve. Mr. Sollog agreed with Mr. Coburn. There were no more questions for Mr. Idman. Both Boards thank him for attending and for providing a clear overview.

The Board of Selectmen portion of the meeting adjourned at 6:50pm.

Mr. Childs asked the Planning Board what they would like to do at this time. Mr. Roderick would like to table this discussion for now as there does not seem to be support from the Board of Selectmen and that the benefits appear to be for the developer and not so much for the Town. Mr. Worthington does not see the benefit at this time. Mr. Sollog could see a development of a large project, but that he believes that CCC can handle a project well. Ms. Tobia asked about the Town's review of such projects.

Mr. Lucy said that back in 2002 the Town was told something very different than what was presented by Mr. Idman. At this point, he does not care whether this goes through, in part because there is not a lot of commercial development. Mr. Roderick reiterated that he sees this as a benefit for the developer and not the town. Mr. Childs ask how the Board would like to proceed. Ms. Tobia moved to forward this to the Board of Selectmen, it was seconded by Mr. Lucy, the vote was 2 in favor and 5 opposed, the motion did not carry. Mrs. Greenhalgh will inform the Board of Selectmen that the Planning Board does not wish to move forward with the Development Agreement at this time.

Continued Review and Discussion of Agriculture related Definitions with David DeWitt

David DeWitt, Agricultural Commission Chair

Mr. DeWitt is comfortable with John Pendleton's (former Planning Board Member) versions of the definitions; however he would still like to see a definition for Agricultural Buildings and referred the second paragraph on the November 12, 2013 version of the definitions.

Mr. Pendleton's Definitions:

Agriculture or Agricultural. Farming, silviculture, viticulture, aquaculture, animal husbandry, poultry husbandry, or apiary activities. Included are accessory uses of packing, treating, or storing of a product of such activities. Excluded are (a) the business of raising animals for use in medical or other tests or experiments, (b) sales of agricultural equipment or chemicals, and (c) commercial storage of agricultural chemicals.

Aquaculture. The cultivation of aquatic organisms (including but not limited to fish and shellfish, and the culture thereof).

Farm. A parcel of land containing no less than two acres on which agricultural activities are conducted. Land divided by a public or private way or waterway shall be construed as one parcel. Included are any residential buildings located on such a parcel which are occupied by the person(s) engaged in the agricultural activities.

Farm Stand or Roadside Stand. A building used for the retail sales of agricultural products produced on the lot on which the building is located. Included are unprocessed foodstuffs, and home processed food products, such as jams, jellies, pickles, sauces and baked goods, which have been processed on said lot. Excluded are commercially processed or packaged foodstuffs or food products.

Farmers' Market. A public market, consisting of three or more vendors, for the primary purpose of selling agricultural products produced by the vendors while connecting and mutually benefiting the vendors, the local community and shoppers.

Market Garden. A parcel of land containing less than two acres on which agricultural activities are conducted.

November 13, 2013 definition for Agricultural Building: *Structures intended primarily or exclusively for support of an agricultural function, and exemplified by, but not restricted to, barns, silos, water towers, windmills, greenhouses.*

Mr. Childs spoke to the fact that there are still other town regulations that would govern these uses as far as parking and health regulations. Mr. Childs asked if Mr. DeWitt wanted to proceed with Mr. Pendleton's version. Mr. DeWitt would like to bring these back to the Agricultural Commission (AgCom) for further review. Mr. Lucy spoke to buildings and zoning requirements, building and parking questions and other issues. Mr. Sollog agrees that parking is an issue. Mr. DeWitt stated that the goal is to get this polished and bring it back for the ATM warrant. Ms. McCarthy stated that although the TNRTA is supportive of farming; there are a number of questions that need to be answered. She would like to see this not go forward at this Town Meeting. This needs to be reviewed further. For example llama is not listed under the list of animals. She asked that slaughter houses be specifically excluded. Mr. Lucy and Mr. Worthington asked for clarification of what is meant by "slaughter houses". Mr. Roderick asked if a use or animal was not listed would it not be allowed?

Mr. DeWitt responded. A slaughter house is highly regulated through the state. He does not see a slaughter house coming to Truro. He suggested that there would be chickens, geese, ducks which will be grown for retail. He does see in the future young farmers having these types of animals available for retail. He will look into how many animals trigger the different levels of review and oversight by the State. He spoke to farm stands. They are currently allowable. The question was asked as to how farms are established. This varies in many ways. Per Mrs. Greenhalgh, currently 2 acres or more is protected under MGL, Ch.40A, §3 for farm use. Mr. DeWitt will bring the concerns back to the AgCom.

Mr. Sollog has a concern with use of manure as fertilizer and the concern with nitrogen loading. He would like to know whether a farm has a right to work with manure. Concern with ground water issues. He sees the need for more specificity. Mr. DeWitt suggested that it would be difficult to determine the nitrogen impacts from a manure pile. Lengthy discussion ensued.

Ms. McCarthy asked what the role of the AgCom is, is it a regulatory Board? She also suggested that there is still the need to define commercial. Water issues, conversation needs to be had with the WROC. Mr. Roderick, farming is a passion; it is difficult to make money. The AgCom is trying to

work with the Board and he is discouraged with the discussion of requiring more and more regulations and laws.

Continued Review and Discussion - Definition of Street and Draft Section 30.11 following Town Counsel Review

Mr. Childs thanked Mr. Worthington for the work he did on this document. Mrs. Greenhalgh explained that the Town Counsel had reviewed the proposed definition of street and Section 30.11 and had no issues with the proposals; however he did raise concern with the mechanism of getting a road determination to the Planning Board. In 2013, the Planning Board had proposed language, which Mrs. Greenhalgh provided to the Board. The Board reviewed the definition and Section 30.11. Mr. Worthington would like to see language added to §30.11.B.2 to include “maintenance” of the road:

2. a way that has been approved, endorsed, ~~and~~ constructed **and maintained** in accordance with the subdivision control law; or

The Board agreed to include the language provided it was acceptable to Town Counsel. Mrs. Greenhalgh raised concern that the subdivision control law does not speak to road maintenance.

The Board then reviewed the language from the 2013 ATM:

Street Adequacy

Purpose: To establish safe and adequate access up to and including a lot which is located on a street that does not meet the requirements of items (a) or (b) in the definition of “Street” (Section 10.4)

Requirements: Prior to the issuance of a building permit for construction expected to result in increased design flow according to Title V, as determined by the Health Agent, the Planning Board shall make a determination of the adequacy of the street, pursuant to the definition of “Street”, item (c), and subject to the requirements, standards and conditions listed below:

- A. Public Hearing – Upon the filing of a request with the Planning Board, the Board shall hold a duly noticed public hearing within forty-five (45) days. Notice shall be made no less than fourteen (14) days prior to the scheduled public hearing via regular first class mail to all the owners of properties along said street.*
- B. Referral – Upon the filing of a request and prior to the public hearing said request shall be referred to the Police and Fire Departments and the Department of Public Works for review and comment.*
- C. Requirements – The applicant shall show to the satisfaction of the Planning Board that the street has sufficient width, suitable grades and adequate construction to provide access for emergency vehicles as well as safe travel and adequate circulation. The Planning Board may refer to and may utilize existing road standards as outlined in the Town of Truro Rules and Regulations Governing the Subdivision of Land (as amended) and the Town of Truro General Bylaws (as amended).*
- D. The Planning Board’s Decision on the determination of adequacy of the street shall be filed with the Town Clerk. Any appeal from that decision must be commenced within sixty (60) days form the date of filing with the Town Clerk under the provisions of Massachusetts General Laws Chapter 249, Section 4.*

After a bit of discussion, the Board asked Mrs. Greenhalgh to incorporate the language in items A – D into a new Section “C” in the draft §30.11 and to ask Town Counsel to review the proposal.

Review of Timeline for Zoning Amendment Public Hearings

The ATM warrant closes on February 27, 2015 at 4:00pm. The Board would need to vote no later than February 17th (the last regular meeting before 2/27/15), to forward any further zoning amendments to the Board of Selectmen.

Review and Approval of Meeting Minutes:

On a motion from Mr. Lucy, seconded by Ms. Tobia, the Board voted unanimously to approve the January 6, 2015.

Mr. Lucy spoke to this year’s election and asked that if anyone is not going to seek re-election (there will be two Board members up this year), that they let the Board and the public know soon, so as to allow for others to take out papers if the incumbents are not going to run.

Adjourn at 8:15pm

Respectfully Submitted,

Charleen L. Greenhalgh
ATA/Planner