

TRURO PLANNING BOARD

Meeting Minutes-Tuesday, May 6, 2014 at 6:00 pm

Town Hall, 24 Town Hall Road, Truro, MA

Members Present: Karen Snow (Chair), Bill Worthington, John Pendleton, Leo Childs, Chris Lucy and Bruce Boleyn

Members Absent: Lisa Tobia

Others Present: Charleen Greenhalgh ATA/ Planner, Steven Sollog, Bruce Edmands, Don Poole Gloria Harris Cater, Dr. Willie Cater, Paul Kiernan, Jack Riemer, Ben Zehnder, Fred Gaechter, Eliza Cox, Christopher Snow, Bob Weinstein, Tom Frisardi, Lucy Clark, Joan Holt, David Clark, Nancy Thornley and John Thornley

Ms. Snow called the meeting to order at 6:00pm

2014-001 - Willie J. Cater and Gloria J. Cater Definitive Subdivision, 9B Benson Road

Representatives: Bruce Edmands, Don Poole and Dave Clark

The applicants have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to Massachusetts c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53.

The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court. This is a continuation from February 18, 2014, March 4, 2014, April 1, 2014 and April 15, 2014. Mr. Pendleton and Mr. Worthington recused themselves.

Mr. Edmands stated that with the benefit of the prior discussion, the Caters have prepared a revised road design. By increasing the grade of the road to 16%, the cut and fill for this road is greatly reduced. The width of the road is not reduced due to potential safety risk. A re-vegetation plan has also been prepared for approval. Mr. Clark described the changes to the plan. The 16% grade is the greatest slope and replacing the cul-de-sac with a T-turn allows the cut and fill on the Truro Conservation Trust land to be eliminated. A turnout is provided along the road. Ms. Snow asked for a description of the guard rail and its location. The placement was explained by Mr. Clark. Ms. Snow asked for explanation of where the hardened surface turns to pavement, the placement of the apron and the specifications for clearance to the turn-around. Mr. Clark explained the temporary apron is a device to mitigate/control tracking of debris from truck tires. The purpose is to knock the material off the wheels of the trucks working at the site. After construction is finished the apron will be removed and the area re-vegetated.

Mr. Boleyn stated he is very uncomfortable and concerned with the safety of the grade. Mr. Edmands stated that there is an unobstructed view from the bottom of the road looking up to the Cater property and vice versa. Mr. Childs agreed that a wider road is a good idea and recommend a hedge fence to protect the properties from wind and noise also questioned whether a catch basin might provide for some contamination to the nearby well. Mr. Clark stated the best option is a

catch basin but he will explore alternate choices. Mr. Lucy stated that a decrease in the grade would increase cut and fill and he asked if it would be possible to run a trench toward Benson Road to carry rain run-off out away from the well on the neighboring property. The road will be pitched to one side because it will allow a narrower road surface and the berm will only be needed on one side.

Ms. Snow asked what the hardened surface choices are and asked if the T-turn and hammer head could be moved on the layout to eliminate any clearing on the Truro Conservation Trust property. Teresa Spray's suggestions are designed to manage/control the invasive species and restore the area with eastern red cedar, scrub oak and plain grassland. Mr. Childs described the particular areas where the height of the re-vegetation should be controlled to allow for low growing ground cover. Discussion continued on re-vegetation.

Ms. Cox attorney representing the Loffredo property stated that her client does not want this access road, but if this is imposed on her client then they are pleased with the grade, which helps preserve the view. Subdivision Control Law requires the Planning Board to conform to the recommendations of the Health agent. Ms. Cox read a response from the Health agent and submitted it for the record. Her client would like to see the road narrowed to 10' total including berm. The plan should respect the natural environment and she stated that many roads are narrower and allow for safe passage. The width will be left up to the Planning Board to determine what is necessary to provide safe access. Ms. Cox stated that through consultation with their engineer, Bob Perry, they ask for the removal of the guard rails as they will obstruct the view. In addition, they want to see a reduction in the driveway apron width and they want a strong restriction on the plan limiting development to one single family dwelling. The Planning Board has that authority. We appreciate Mr. Lucy's suggestion to move run-off to Benson Rd which will disperse storm water over a larger area.

Mr. Zehnder representing Truro Conservation Trust (TCT) stated that it is in the hands of the Planning Board to preserve this land. This looks like a good plan. The TCT would like to see a reduction in the road width to 10' and they asked for several conditions 1) No lighting be permitted on the roadway; 2) Require bonding, it is critical to secure a covenant surety bond; 3) Restoration time period be limited 90 days; 4) No construction during July and August; 5) Require the planting to be maintained forever; and, 6) Compensate for the horizontal disturbance done to the land in the Truro Conservation Trust. Mr. Lucy engaged in a discussion about the width of the road. Mr. Zehnder asked to allow the narrowest width possible.

Mr. Frisardi attorney for Lucy Clark stated emphatic objection to any approval of this plan. The applicant does not have the requisite frontage. The Land Court did not confer a frontage right to the Right of Way. The conditions suggested are worth consideration. Cash bond is essential and include a time limit. The court advised information and therefore the decision is not binding. Mr. Frisardi used some examples of Court decisions to make his point, finally stating that a 40' right of Way is the requirement to the subdivision control law so the application must be denied.

Mr. Kiernan asked for a point of order concerning the change in the Planning Board membership in the very near future, leading to the possibility for a conditional approval of the plan. If that were to happen then which plan would be conditionally approved? Ms. Snow stated that it is her intention to have a vote on this subdivision this night. The Board worked on specifics of the plans. Ms. Snow reviewed the plan specifics with the abutters and the rest of the Board.

- A ten foot width for the road way. A one and a half foot berm and two-foot shoulder with hardened surface. A total of ten foot hardened surface for the unpaved section of the road.
- No lighting on the roadway other than on the Cater property.
- A discussion on the bond ensued. Mrs. Greenhalgh read the Massachusetts General Law on securing a bond. The Board worked out the wording of a requirement of bond.
- Mr. Edmands stated that his clients are willing to delay construction until September.
- Maintaining the road will be in the statement of conditions which runs with the property.
- Set aside an equal area of property as that which is disturbed on the TCT property, dedicated to open space. Mr. Edmands accepted the condition, setting aside the area.
- In the matter of the septic location the Caters understand their responsibility and obligation to rectify any disturbance. It would require the Caters to adhere to whatever is required by the Board of Health.
- As stated in the letter the unpaved section of roadway should be 10' wide inclusive of the shoulders hardened surface.
- One Single family home on the lot condition.
- Move catch basin away from the leach pits.
- Name of proposed road Hopper Lane.

Mr. Lucy discussed the pitch of the road with Mr. Boleyn who feels the grade is a major safety issue. Mrs. Greenhalgh stated that the application must be approved by National Heritage and the waivers must be on the plans. The Board reviewed the waivers to be included on the plan.

Mr. Frisardi asked that the monument restoration be included as a condition on the plan, including the waivers as requested by the applicant.

Ms. Snow opened the meeting to public comment at 8:56pm.

Mrs. Holt an abutter stated the Board is ignoring the subdivision by-laws. The 40' right of way is not waive-able in design standards and a building permit will not be issued. Ms. Snow responded regarding subdivision after speaking with Town Counsel and the Town Planner both advised this is a plan which has merit and similar subdivisions have been approved in the past. This driveway is not a road and the Planning Board is weighing in on how it should be built. The judge did not guarantee a building permit in fact if the building commissioner decides that this road does not confer frontage then other boards will review the case. Mr. Kiernan agreed with what the chair stated, but questioned using §2.5.2.16 where the abutters can build a fence, where is the limit of the right of way.

Mr. Edmands stated that the Judge did not specify the exact dimensions of the right of way. The judge intended that the Caters would have a right of way which would provide access to the Cater property, which would satisfy the zoning requirements.

Mr. Kiernan read a statement objecting to approval of this plan. The Court mandated approval of a subdivision but there should be no misunderstanding that this roadway will not confer frontage. Mr. Riemer asked the Board to address safety issues any bright sunny day could cause the blinding of a driver's view, and asked the Board to deny the application. Ms. Snow closed the public hearing.

After further Board discussion, on a motion from Leo Childs, seconded by Christopher Lucy, the Board voted to approve the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53, with the following conditions:

1. The paved portion of the road shall have a width of 10' paved, with a 1½' berm on one side, with 2' of hardened shoulders on either side. This is exclusive of the T-turnaround in the cul-de-sac.
2. The unpaved portion of the road shall have a width of 10', with 2' of hardened shoulders loamed and seeded.
3. The unpaved portion of the road shall be constructed with a dense graded base with a natural surface. A detail of the construction shall be provided.
4. No work related to the roadway shall commence until the septic system serving 9 Benson Road has been designed, permitted, and relocated in accordance with the requirements of Title 5 (310 CMR 15.000 et seq) and the Truro Board of Health Regulations, and the new system has been put into operation. This shall be so noted on the plan and within the Planning Board Covenant.
5. The guard rail shall begin approximately at Station 2+75 rather than at Station 2+00.
6. The proposed limit of clear for the T-turnaround shall be restricted to within the confines of the cul-de-sac area.
7. There shall be no lighting of the roadway on the Truro Conservation Trust, Loffredo or Clark properties.
8. The applicant shall deposit with the Town a cash or other approved bond in the amount of \$25,000, in addition to a Planning Board Covenant. The bond shall be remitted to the applicant upon completion of all construction and restoration in accordance with the approved plans, and verification by the Planning Board that vegetation has stabilized and is reasonably expected to survive and grow normally. No Certificate of Occupancy shall issue for the property until the bond has been deposited with the Town.
9. There shall be no construction of the roadway during the months of July and August in any year.
10. The applicant shall set aside as open space through a plan notation and covenant, or through a conservation restriction, an area of land on the Cater property at least equal in square footage to the area of Trust land disturbed for the project.
11. A Statement of Condition will be executed and shall include the provision that the roadway shall not be constructed except in connection with the construction of a single family dwelling on the Cater property.

12. The applicant shall count all trees measuring 6" DBH (for example Pitch Pine, Oak, Cherry), but not including invasive species, which are to be removed from the Loffredo property (9 Benson Road) within the limit of work area, and for every such tree removed, one shall be planted on the Loffredo property in a location acceptable to the Loffredos.
13. The leach pits located at Station 2+00 shall be relocated outside the 100 feet radius to the well on the Loffrado property.
14. The subdivision road shall be known as "Hopper Lane".
15. The temporary apron, to be used during construction, shall be reduced to 10' on the Construction Plan. Following construction of the road the temporary apron shall be removed and shall be reconstructed in conformity with the remainder of the unpaved road. Any disturbed areas shall be revegetated.
16. The Eastern Red Cedar shown on the BlueFax Restoration/Planting Plan within the 100' radius of the Loffrado well, shall be relocated to outside the "white" area as shown on the plan.
17. Any monuments disturbed during construction shall be replaced.
18. No construction of the way shall commence until Natural Heritage's Massachusetts Endangered Species Act (MESA) has acted and/or signed-off.
19. All waivers, in item 20, shall be noted on the definitive plan prior to endorsement.
20. The Board approved the following waivers from the Town of Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Recommended Geometric Design Standards for Subdivisions:

Standard	Requirement	Proposed	Waiver Requested
Roadway Layout			
Minimum right of way width	40 feet	12 feet	28 feet
Minimum roadway width	14 feet	12 feet	2 feet
Shoulder width	4 feet	2 feet	2 feet
Grade			
Maximum grade	8% or 10% For 100 feet	16% For 200+/- feet	8% or 6% 100+/- feet
Intersection Standards			
Minimum intersection angle	60 deg.	32 deg.	28 deg.
Minimum curb radius	20 feet	0 feet	20 feet
Dead-end Street			
Minimum radius of circular turnaround, to curb or to edge of pavement	40 feet	T- Turnaround	T-Turnaround

The Board's vote was three (3) in favor (Messer's Childs and Lucy and Karen Snow) and one (1) vote against (Bruce Boleyn). As a simple majority of the Planning Board is required for approval and the Truro Planning Board is a seven (7) member Board, the approval was not received.

Winkler Route Six Trust, Michael F. Winkler, 1 Noons Heights Road, Site Plan Review

Representative: Benjamin Zehnder

This is a continuation of a Public Hearing from April 1, 2014 and April 15, 2014. The applicant seeks endorsement of an Application for Site Plan Review pursuant to §70.2 of the Truro Zoning By-law for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance. The property is located at 1 Noons Height Road, Atlas Map 39 Parcel 166.

Mr. Zehnder stated that two members will be off the board with the coming election, leaving only four present members to act on the request, he therefore asked to withdraw the application without prejudice and resubmit when the new Board is formed following the May 13 Town Election. Mr. Snow, attorney for abutters, asked to hear the matter as there have been multiple delays in this application. He reviewed the two iterations of the site plan, the failure of the applicant to comply with Town cease and desist orders. A revised plan was filed that was insufficient. The application has been pending and asks that Board act to deny the application.

Mr. Pendleton stated that the application is still inadequate and has been presented 3 times and does not propose to address the potential of protecting the groundwater or the surrounding area. On a motion from Mr. Pendleton, seconded by Mr. Boleyn, the Board found that approval for the application in the form submitted for **Winkler Route Six Trust, Michael F. Winkler, Trustee**, pursuant to §70.3 of the Truro Zoning By-law approved by the Truro Annual Town Meeting on April 29, 2014 (previously §70.2) for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance; cannot be given based on the finding that the application as submitted:

(a) is incomplete.

(b) and with the imposition of reasonable conditions will not ensure that the project will conform to the standards and criteria described herein.

(c) and with the project as proposed, does not comply with the requirements of the Zoning By-law.

The Board's vote was four in favor (Pendleton, Childs, Boleyn and Snow) and two opposed (Worthington and Lucy.)

The Board thanked Ms. Snow for her dedication to the Planning Board and also thanked Mr. Pendleton for his service.

Adjourned at 9:52 pm

Respectfully submitted

Steven Sollog