

TRURO PLANNING BOARD AGENDA
TUESDAY, August 15, 2017 – 6:00 p.m.
Truro Town Hall, 24 Town Hall Road, Truro

Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Continued Public Hearing - Commercial Site Plan Review

2016-008SPR Maria Kuliopulos seeks approval of a Modification to a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by four. Plans include construction of a replacement building containing 17 rentable units and a hospitality room in the same location as a previously demolished fire damaged structure. The property is located at 706 Shore Road, White Sands Beach Club, Assessor's Atlas Map 39 Parcels 131, 158. Hearing continued from March 7, 2017, May 2, 2017, June 6, 2017 and June 27, 2017.

Public Hearing – Commercial Site Plan Review

2017-007SPR Lexvest East Harbour, LLC seeks approval of a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by combining units, proposal also includes some changes to site improvements. The property is located at 618 Shore Road, East Harbour Cottages and Condominium, Assessor's Atlas Map 5, Parcel 13. This is the initial hearing on this application.

Definitive Subdivision Plan – Review of Road Maintenance Agreement

2017-002PB Claire A. Perry, Trustee, review of proposed road maintenance agreement pursuant to §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located 27 Perry's Road, Map 45, Parcel 144. A definitive subdivision plan was approved on July 18, 2017.

Residential Site Plan Review – Request for Opinion of Counsel

2017-006SPR Christopher and Jane Clark, Board review of a proposed request for opinion of counsel concerning the zoning status of the subject premises. The property is located at 1 Higgins Hollow Road, Map 46 Parcel 289.

Review and Approval of Meeting Minutes

July 18, 2017 Regular Meeting
August 1, 2017 Regular Meeting

Reports from Board Members and Staff

Acting Town Planner report.

Meeting Dates and Other Important Dates

September 5, 2017 (Tues.) – Regular Meeting
September 19, 2017 (Tues.) – Regular Meeting
October 3, 2017 (Tues.) – Regular Meeting
October 17, 2017 (Tues.) – Regular Meeting

Adjourn



TOWN OF TRURO

Planning Department

P.O. Box 2030, Truro, MA 02666

Tel: (508) 349-7004 x127 Fax: (508) 349-5505

Memorandum

To: Planning Board
Fr: Harry Terkanian, Acting Town Planner
Date: August 8, 2017
Re: **2017-007SPR East Harbor**, Staff Report #2

2017-007SPR Lexvest East Harbour, LLC seeks approval of a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-law for renovations to the site, manager's building and motel building. The renovation will result in four fewer units. Gross floor area of the units plus housekeeping in the manager's building will increase from 8,805 square feet at present to 8,845 square feet proposed. The property is located at 618 Shore Road, East Harbour Cottages and Condominiums, Truro Assessor's Atlas, Map 5, Parcel 13.

In Staff Report #1 under Staff Comments I noted that:

The Board should consider whether the combination of some adjacent motel units into a single unit results in a space which meets the definition of a motel unit. The Zoning Bylaw provides, in the definition of "Motel," provides that motel units "shall consist of not more than one room exclusive of bathroom facilities. . ." The applicant was made aware of this in the June 30, 2017 letter to attorney Murphy.

I spoke with attorney Murphy about this issue on August 8th. He directed my attention to Zoning Bylaw §40.3 and a special permit issued by the ZBA dated September 14, 1989 as evidence that the property has been converted to multi-family use. A copy of that special permit was included with the application. Attorney Murphy feels that as a result of the special permit the property is now a multi-family use and therefore the "single room" requirement in the definition of "Motel" no longer applies. He supplied the following by email:

With respect to the issue of the Motel definition, it has been my experience on any number of properties down in Provincetown that once the Condominium conversion is authorized by Special Permit of the Zoning Board and the property is changed from the motel use to a multi-family use the issue of definition of Motel Room no longer is applicable. I believe this issue was actually litigated with the Crowell Sands property which changed upstairs and downstairs Motel Units into Townhouses and was the subject of an appeal by the property owner from the Zoning Board Denial.

Staff Report #1 contains an error in the discussion of Review Criteria/Design Guidelines, criterion 2 in section F. of the report (on page 4.) The statement that "*the conditions set forth in the January 19th decision, specifically #6, #7 and #19 have not been met*" is inapplicable to the subject property and was included in error. The sentence should read: "The modification does not change impacts to abutting properties."



Dear Bertra Perkel and Board Members,

I'm sending you these pictures of the East Harbor Motel & Cottages at 618 Shore Rd. North Truro having there guest parking across the street from the Motel. This is unsafe for the residents that walk or jog on Rt 6A

I hope this will help you members, when Lexvest Group led by Eric Shapiro comes in front of the board August 15th about there parking dilemma on there site.

Best Regards,

Concern Resident of Beach Point

cc to Town Manager, Rue Ann Paimer

RECEIVED
AUG 10 2017
BY: Planning Dept.





2017-002 PB PERRY

MAINTENANCE AGREEMENT FOR PRIVATE ROAD EXTENSION OF PERRY ROAD, TRURO

WE, THE UNDERSIGNED owners of the Private Road portion (extension) of Perry's Road, Truro, Barnstable County, Massachusetts, as shown on a subdivision plan of Lots 3A, 10 and 12 is recorded in Plan Book 630, Page 58, in Barnstable Registry of Deeds, do hereby agree to the following road maintenance agreement.

We will keep the road extension portion, as it currently has been approved under the rural road by-law of the town of Truro, in good repair; said road being a dirt road with hardening with a turnaround at its end and several pull-over areas as required by the Planning Board in relation to the subdivision approval for Lot 10B on said road.

This Maintenance Agreement will be recorded with the filing of the approved Subdivision Plan for lot 10B made for Claire A. Perry and approved July, 2017, by the Planning Board.

This Maintenance Agreement will require the current owners and future owners of the property that abut the said road, and/or owners who access their property from this dirt road, to pay their fair share of said maintenance of the road.

Any maintenance done to the road must have the majority vote of the property owners. However, since the road also serves as access road (garden road) for the crops grown abutting the road, and pasture land, the maintenance agreement is also for the benefit of the agricultural use and in no way shall it impede or obstruct the agricultural operation.

Perry Family Limited
Partnership
Richard Perry

Claire Perry Living Trust

Scott Perry -

Lucy J. Perry, Trust
Claire A Perry Trustee



TOWN OF TRURO

Planning Department

P.O. Box 2030, Truro, MA 02666
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hterkanian@truro-ma.gov

To: Truro Planning Board
From: Harry Sarkis Terkanian, Acting Town Planner
Date: July 31, 2017
Re: Request for Opinion of Counsel

During the August 1, 2017 Planning Board meeting the Board reviewed the staff prepared draft decision on the residential site plan review application filed in matter 2017-006SPR – Christopher & Jane Clark. During the review the question whether the subject premises is in compliance with the Truro Zoning Bylaw was raised. The premises are lawfully non-conforming with respect to area. The focus of concern expressed at the meeting was whether there is a second kitchen in one of the accessory structures on the premises, and whether that structure is also a dwelling, resulting in two dwellings on the premises, potentially in violation of current zoning. The residential site plan filed for the property does not propose any change to either of the accessory structures. The site plan review portion of the Zoning Bylaw, §70.1.B, provides:

Sites and developments to which this section applies *shall comply with the regulations of this section as well as all other applicable Town Bylaws* and the requirements of the Commonwealth of Massachusetts prior to any construction being undertaken in the Town of Truro. Approval under this Section does not constitute approval under any other applicable federal, state or local requirements. (*emphasis added*)

70.4.E, Findings of the Planning Board, provides:

The concurring vote of four members of the Planning Board shall approve a Residential Site Plan in the form submitted or with reasonable conditions, unless it finds that (a) the application for site plan approval is incomplete, or (b) the imposition of reasonable conditions will not ensure that the project will conform to the standards and criteria described herein, or (c) *the project does not comply with the requirements of the Zoning By-law.* (*emphasis added*)

The Planning Board wishes advice of counsel as to whether, in light of the provisions of §70.1 B, the Planning Board can approve a residential or commercial site plan for property which is in violation or in apparent violation of the Truro Zoning Bylaw.

DRAFT

TRURO PLANNING BOARD

July 18, 2017 – 6:00 p.m.

Truro Town Hall
Meeting Minutes

Planning Board Members present: Bruce Boleyn, Peter Herridge, Paul Kiernan, Jack Riemer, Mike Roderick, Steve Sollog, Karen Tosh

Other participants: Ben Zehnder, attorney; Chris Clark, Chuck Steinman, Rae Ann Palmer, Town Manager; Chet Lay, Tim Brady, Claire Perry, Nathan Nickerson, Harry Terkanian, Interim Town Planner.

Mr. Sollog called the meeting to order at 6:05 pm.

Public Comment Period

There was no public comment.

Temporary Sign Permit (2 applications)

Truro Center for the Arts at Castle Hill – seeks approval of two applications for 30 day Temporary Sign Permits pursuant to §11 of the Truro Sign Code for:

- a. One sign 48” by 36” to be placed on Route 6 at 3 Edgewood Way for an event to be held on July 28, 2017, sign to be placed on July 24th and removed on July 31st.
- b. Five signs 33” by 22” or 48” by 36” to be placed at Route 6 at Castle Road, corner of Truro Central and Castle Roads, 10 Meetinghouse Road, median @ Pamet Road exit and Route 6 and Route 6 at 3 Edgewood Way for an event to be held on August 12, 2017, signs to be placed on August 7th and removed on August 14th.

Mr. Sollog said there are a plethora of signs. He asked if five signs too many? There was some discussion. Mr. Herridge moved to approve the two applications, Mr. Boleyn seconded. So voted, 7-0.

Temporary Sign Permit (2 applications)

Friends of the Truro Library – seeks approval of two applications for 30 day Temporary Sign Permits pursuant to §11 of the Truro Sign Code for two signs, one 27” by 18” located at Snow’s Park and one 2 ½ feet by 6 feet located on Rt. 6 near the Library. For the August 9, 2017 event signs will be placed on July 31, 2017 and removed on August 10, 2017. For the August 10, 2017 event signs will be placed August 1, 2017 and removed August 10, 2017.

Mr. Herridge moved to approve the applications, Mr. Boleyn seconded. So voted, 7-0.

Continued Public Hearing - Residential Site Plan Review

2017-006SPR Christopher and Jane Clark, seek approval of an application for Residential Site Plan Review pursuant to §70.4 of the Truro Zoning Bylaw for demolition of an existing dwelling and construction of a new dwelling on a pre-existing nonconforming developed lot in the Seashore Zoning District. The property is located at 1 Higgins Hollow Road, Map 46 Parcel 289. Hearing continued from June 27, 2017.

Mr. Zehnder and Chris Clark presented the revised plans of the project. Ambrose Homes has provided details and elevations. There was correspondence filed about the historic nature of the project. Mr. Sollog said that the Planning Board did get a legal response and opinion. But he was unable to get an opinion from a historic expert.

Mr. Zehnder said that the Historic Commission is not part of site plan review. Mr. Kiernan read from the comprehensive plan that one of the goals is to preserve Truro's heritage. He was concerned that when the Planning Board went on the site visit to the Clark's property, they were not allowed to go in to the buildings. He would like a professional to tell us that the building is not salvageable. He called the Cape Cod Commission and found out about their discretionary referral. Mr. Kiernan feels that the Planning Board has the ability to refer this project to the Cape Cod Commission. He asked if the house in question is eligible to be listed on the Historic Register. Mr. Zehnder talked about the process to be place on the Federal register, going first through the State process. He claimed that the Planning Board has no authority request that process. If it were submitted to MAC, would it be accepted?

Mr. Riemer asked if Mr. Steinman would speak, since he has some expertise. Mr. Steinman described the process of having MAC review whether the house should be on the State Historic Register.

Mr. Kiernan brought up the elevations. He found some discrepancies. There is no roof plan. He brought up the renovation of the writing studio, which he stated never had a building permit. He also brought up that the Ambrose plan is faulty. The two roofs don't meet. There is a plan called proposed south elevation, which includes the site of the original building. The roof line seems to stop at the garage. There are three different heights. On the proposed north elevation, there is a continuous height from the left hand side and that roof line continues straight across, Mr. Kiernan said that it would be helpful if we saw a plan of the roof.

Mr. Kiernan continued by saying that there are no cross sections of the interior. He's not sure it's true that the building cannot be saved. Mr. Zehnder said that whether it can be saved or not is not in the purview of the Planning Board.

There was a question as to whether the owner has the option not to register the house. Mr. Zehnder said that the Commission can determine whether it is eligible for the historic register. Mr. Kiernan said that he thinks the Planning Board should at least go to the Cape Cod Commission to get information. Many of the neighbors of this property have made an effort to save their houses. Mr. Zehnder again told them it is not the Planning Board's purview. Mr. Kiernan said he would like to see the Cape Cod Commission help them through the process. Mr. Zehnder objected. He told the Board that this application meets your requirements.

Mr. Riemer said in Truro's Comprehensive Plan there is an emphasis on preservation. Also, he said that limited information has been provided about building materials. He was concerned about drainage, and he said that the little Pamet River is slowly drying up. There may be efforts to restore the Pamet River. There is no vegetation plan submitted.

In addition, there are structures other than the one being demolished and the Planning Board is expected to learn what these structures are being used for. Mr. Zehnder said that it is clear what the buildings are being used for, simply residential uses. Mr. Sollog asked about the Seashore amendment. Mr. Clark is willing to go to Zoning Board of Appeals for approval. Mr. Riemer asked about the picture of the interior of the barn which is called a studio. He asked if it has a kitchen, and if so there are two single family dwellings. The Planning Board is required to be sure there are no zoning violations. We don't have enough information that there are no zoning violations. Mr. Zehnder said that that is not the issue that is being heard tonight. Mr. Riemer feels the application is incomplete. Mr. Riemer said that it doesn't state whether it is painted or not. Mr. Zehnder said this house is not out of character with the neighborhood.

Mr. Kiernan would like to make a motion for a discretionary referral to the Cape Cod Commission. Mr. Riemer seconded the motion. Discussion ensued. Mr. Sollog said that a landscaping plan has not been submitted. The work area is not marked. Mr. Sollog asked about the list of waivers. Mr. Zehnder said that at the last meeting they were asked for a drawing and a site visit. We understand that a landscape plan is required.

Mr. Sollog said he thinks a referral to the Cape Cod Commission would just be a delay. A vote was taken on the motion, which passed, 4-3. Mr. Boleyn, Mr. Herridge, Mr. Kiernan and Mr. Riemer voted in favor. Mr. Sollog, Mr. Roderick and Ms. Tosh voted against the motion.

Mr. Terkanian said that the Planning Board should consult with Town Counsel before making such a referral. There was further discussion about the Board's authority and the role of the Selectmen in referring an application for site review to the Cape Cod Commission. Mr. Zehnder asked the members to revote the issue, due to the hardship the delay would place on the applicant. Mr. Steinman came forward again and said he agreed with Mr. Zehnder. Mr. Kiernan asked to seek middle ground, by continuing the hearing and inviting the Historic Preservation Committee to weigh in.

Rae Ann Palmer, Town Manager, came forward. She cautioned the Board members that they may be subjecting the Town to further legal costs. After further discussion, Mr. Herridge made a motion to reconsider the vote on referring the application to the Cape Cod Commission. Ms. Tosh seconded the motion. So voted, 4-2-1. Mr. Boleyn abstained, Mr. Kiernan and Mr. Riemer voted against rescinding the vote for the referral.

Mr. Terkanian explained the Boards options in terms of the site plan review decision. Discussion ensued regarding solar and wind energy conservation, the endangered species act, grade height, orientation of the house (which will be different than the current house), drainage, the vegetative screening of the property (preserving the screening could be conditioned), fitting in with the neighborhood, style of windows (6 over 6 and 8 over 8), correcting the roof line on

the drawings, and redesigning the sections of the new house to be more consistent with historic houses.

Mr. Riemer asked about the screened porch which Mr. Clark said was just a porch, not living space. Mr. Riemer said that we don't have a landscaping plan. Mr. Clark said they will use indigenous plants, such as lilacs and Rose of Sharon.

Curb cuts will not be changed on the existing driveways. Lighting was discussed to condition shielded or down lighting. Mr. Riemer expressed his concern about the use of the structures and the fact that there are two dwellings on the property. Mr. Terkanian explained that the Planning Board is tasked with considering whether the project is in compliance, not the entire property. Further discussion occurred about the Board's approval of two dwellings on one lot. Mr. Zehnder said that his client is not asking for approval for two dwellings. The other structure has been there since 1957. Mr. Kiernan would like the applicant to add the writing studio to the plans. Mr. Terkanian said that the Board can condition that the applicant comply with Truro's Zoning laws. Mr. Kiernan asked about the Seashore rule and how it applies to the Clark's project. Mr. Terkanian said it comes within under the high water mark for special permit, needing Zoning Board of Appeals approval. Mr. Steinman said the roof pitch has changed and so square footage might change, and needs to be recalculated.

Mr. Terkanian read the conditions:

1. *Provide a plan showing the limits of work.*
2. *Provide as built site topography after completion of construction.*
3. *Maintain existing vegetative screening from Higgins Hollow Road.*
4. *Comply with Truro General Bylaws, Chapter IV, Section 8 (exterior lighting)*
5. *Windows to be either six over six or eight over eight with white trim.*
6. *File corrected building elevations showing the roof line of the North elevation consistent with that of the South elevation.*
7. *Provide a revegetation/landscaping plan for all disturbed areas.*
8. *There shall be no change in curb cuts.*
9. *Compliance with the applicable requirements of the Truro Zoning Bylaw.*
10. *If approved by the Attorney General, the project will require a special permit under pending Zoning Bylaw section 30.3.1, Residential Building Size Regulations*

There was a brief discussion about what is involved in changing a pre-existing non-conforming structure.

Mr. Herridge made a motion to approve the residential site plan with the conditions stated by Mr. Terkanian, Mr. Roderick seconded. So voted, 5-2 (Mr. Riemer and Mr. Kiernan voted against.)

Ten minute break

Continued Public Hearing - Commercial Site Plan Review

2016-008SPR Maria Kuliopulos seeks approval of a Modification to a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by four. Plans include construction of a replacement building containing 17 rentable units and a hospitality room in the same location as a previously demolished fire damaged structure. The property is located at 706 Shore Road, White Sands Beach Club, Atlas Map 39 Parcels 131, 158. Hearing continued from March 7, 2017, May 2, 2017, June 6, 2017 and June 27, 2017.

Mr. Terkanian said that on June 26th, the Zoning Board of Appeals continued their hearing on the Kuliopulos Plan to July 31st. Prior to that the Planning Board had continued their hearing to this date (July 18th). So we are in the same situation we were in before, not knowing what the ZBA is going to do. Mr. Terkanian wrote to Attorney Patten about the confused state of the plans. There was a further request to continue to August 15th. Mr. Terkanian spoke to Ms. Kuliopulos and Mr. Patten. Mr. Kiernan said that if they are going before ZBA on the 31st, they will be coming back to us before the appeal process is over. It could be as long as 34 days. August 15th could be premature. He asked if the Board can ask them to resubmit. Mr. Terkanian said you can let them know that their submission is incomplete. He said that it is better to simply continue the hearing, so you don't have to defend a decision. Mr. Herridge said he will not be at the August meeting, so it will only be 4 possible votes, due to two of the Planning Board not being eligible to vote. The Board asked Mr. Terkanian to write a letter and let applicant know as much. Mr. Herridge moved to continue the hearing to August 15th, Mr. Kiernan seconded. So voted, 7-0.

Continued Public Hearing - Definitive Subdivision Plan

2016-010PB Stephen Walsh, et al, have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located on Walsh Way, Walsh Way Extension and Valentine Lane, Map 43, Parcels 7, 8, 9, 10, 134 & 135. The plan would widen existing roadways with no new lots created. Hearing continued from September 6th, September 20th, November 2nd and December 6, 2016 and February 7, March 7, April 11, 2017 and June 6, 2017.

Chet Lay spoke about the new revision, dated June 12, 2017, complying with the Planning Board previous requests. Mr. Riemer expressed concern about drainage onto Rt. 6. It was agreed that the Department of Transportation has jurisdiction over any new road that might be built in the future.

Mr. Kiernan asked to speak. He asked if the Zoning Board of Appeals has given approval for two cottages. The answer was that they are pre-existing. Mr. Kiernan asked if it would be safe to allow conveyance of these lots, if there is no road.

Mr. Terkanian said that procedurally, it would be good to go through the list of waivers, considering what would be in the public interest, and in compliance with regulations. Then look at what is left in your subdivision rules. It is up to the Board's discretion which waivers to grant.

Mr. Riemer said that we need to discuss whether this subdivision is in the public interest. Mr. Sollog said that he thinks the drainage is acceptable as is.

Mr. Riemer said he's concerned with safety, and that someone purchasing a lot would have no road for access.

It was suggested that the waivers regarding the road (that is not going to be built at this time) be grouped together. Mr. Riemer asked about a stop sign. Mr. Lay said they would put in a stop sign.

The requested waivers are listed:

- 2.5a6 Drainage calculations
- 2.5.2a9 Traffic Impact study
- 2.5.2a10 Three proposed road names
- 2.5.2b5 Existing and proposed methods of providing road drainage and utilities
- 2.5.2b10 Topography of land (shown on preliminary plan)
- 2.5.2b14 Base flood elevation
- 2.5.2b21 Notation prohibiting the conveyance of lots and the issuing of building permits
- 2.5.2b22 Two onsite USGS Benchmarks
- 2.5.2b24 All information required on Preliminary Plan
- 2.5.2b29 Notes indicating that all Utilities shall be underground
- 2.5.2b30 Location of trees
- All of section 2.5.2C Contents of Plan, profiles, and Cross-sections
- 3.6.1.c Provision for projection of streets to adjoining property
- 3.6.8 Design Specifications for Type B road, per Table 1, Appendix 2
- 4.1.2 Clearing, grubbing and excavation
- 4.1.3 Erosion control measures
- 4.1.5 Sub-base
- 4.1.6 Grade
- 4.1.7 Surface material
- 4.1.8 Berms
- 4.1.9 Street signs
- 4.1.10 Vegetation
- 4.2.1 Drainage installations
- 4.2.2 Catch basins
- 4.2.3 Drainage pipe outlets
- 4.3 Underground utilities (there is an existing overhead line)
- 4.4 Inspection
- 4.5.1 Clean up
- 4.5.2 Documentation (for construction a plan will be submitted showing the locations of the new concrete monuments).

In addition, the project does not meet the design standards for a Type B road pursuant to 3.6.8 and Table 1 (appendix A), and a waiver of compliance with those standards is required.

This waiver request has not been submitted.

Mr. Sollog made a motion to approve the waivers, adding a stop sign, and a condition requiring removal of a cottage. Mr. Herridge seconded the motion. Mr. Riemer said he feels the project is unsafe. So voted, 4-1-2. Mr. Riemer opposed, Ms. Tosh and Mr. Kiernan abstained.

Mr. Herridge moved to approve application 2016-010PB Stephen Walsh, et al, for a Definitive Plan as filed with the Clerk of the Town of Truro pursuant to MGL c.40A, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property located on Walsh Way, Walsh Way Extension and Valentine Lane, Map 43, Parcels 7, 8, 9, 10, 134 & 135. Said plan is entitled "Definitive Subdivision of Land in Truro Showing a Re-division of Parcels 43-7, 43-8, 43-9, 43-10, 43-134 & 43-135 as shown of the Truro Assessor's Atlas," made for John Walsh, Ellen Shiel, Elizabeth Walsh Carver, Miguel D. Walsh, Stephen Walsh & Mary Ellen Walsh, by Slade Associates, Inc., October 6, 2016, Revised September 1, 2016, Scale 1"=50'. The plan would widen existing roadways with no new lots created.

Mr. Boleyn seconded the motion, so voted, 4-1-2. Mr. Riemer opposed, Mr. Kiernan and Ms. Tosh abstained.

Continued Public Hearing - Definitive Subdivision Plan

2017-002PB Claire A. Perry, Trustee, has filed an application for approval of a Definitive Subdivision Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located 27 Perry Road, Map 45, Parcel 144. A preliminary subdivision plan was approved on June 30, 2016. Hearing continued from June 27, 2017

Mr. Brady re-introduced the proposal. Claire Perry explained the plan and how it came into being. Mr. Riemer asked if the Conservation Commission will need to approve the road upgrade. The house that the Perry's want to build will require going before the Conservation Commission and Natural Heritage. Mr. Terkanian said that the previous subdivision doesn't have a lot of bearing here. A discussion ensued about the various lot lines. Mr. Kiernan said he would like to see a turnaround at the end of the road. He would also like to see defined turn outs. Also some drainage to go into the ground instead of on the pavement. Actually the paved Town road is draining on the private dirt road. The 33 and 40 foot road width difference for the public portion of Perry's Road on the plan was discussed.

Mr. Terkanian said that the Board could reimpose the condition that was there before, that any further subdivision come back before the Planning Board.

Mr. Sollog read the waivers. There was discussion about not waiving drainage calculations. Mr. Brady asked what the Board would do with the drainage calculations. Mr. Roderick said it would be neighborly if we waived drainage because the Town road is draining on the Perry's private road. DPW asked the Board not to waive drainage calculations. Mr. Kiernan

asked if we have already done everything we can do in terms of safety. There was discussion about having a Home Owners association. Further discussion of the monuments marking property corners.

Mr. Boleyn, Mr. Herridge and Mr. Riemer would like to see a home owner's association. Mr. Terkanian sent Mr. Brady a road maintenance agreement. The Board could make it a condition to have a road maintenance agreement, in place of a home owner's association.

Mr. Sollog read the requested waivers:

2.5.2.a.6 – Drainage Calculations

2.5.2.a.9 – Traffic Study

2.5.2.a.10 – Three Proposed Road Names

2.5.2.b.1 – Subdivision Name.

2.5.2.b.5 – Existing & Proposed Methods of Providing Road Drainage and Utilities

2.5.2.b.10 – Topographic Contours

2.5.2.b.16 – Grades, Widths, Locations, Sight Distances, Physical Condition of Existing Roadways

2.5.2.b.22 – Two on site U.S.G.S. Benchmarks

2.5.2.b.24 – All Information Required on a Preliminary Plan

2.5.2.b.30 - Location of All Trees of 10" Diameter

2.5.2.c – Plan, Profile and Cross Section

2.5.2.c.11 – Limits of Clearing

2.5.2.c.15 – Landscape Plan

2.5.2.c.16 – Erosion Control Plan

2.5.9 – Homeowner's Association.

3.4.1 – Setting Monuments at Property Corners. Waiver requested for the corners Lot 10B on the east side of the cul-de-sac and the setting of monuments at the angle points in the easterly property line (with the exception of the most southerly corner of Lot 10B (sic)) as this line is defined by the centerline of the road."

3.7 – Existing Way to be Improved in Accordance With Rural Road Alternative

4.1.1 – 4 Foot Shoulders

4.2 – Drainage

3.6.6 – Dead end street exceeds 1000 feet

On a motion by Mr. Herridge and seconded by Mr. Roderick, the Board voted to approve the Definitive Plan, revised 6/12/17, pursuant to MGL c.41, §81 U and Section 2.5 of the Town of Truro Rules and Regulations Governing Subdivision of Land, subject to the following conditions:

1. Construction of a turnaround;

2. Construction of two turnouts and supplemental plan showing location and dimensions;
3. The traveled way within the subdivision is a flat, well graded dirt road between eight and ten feet in width. Any further subdivision of land off the private portion of Perry Road shall require further upgrades of said road thus requiring further review and approvals from the Truro Planning Board.

So voted, 7-0.

Public Hearing – Definitive Subdivision Plan

2017-003PB Kristen A. Hall, Conservator for Steven F. Rogers (by Nickerson Realty Corporation, applicant) has filed an application for approval of a Definitive Subdivision Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located at 25 & 25A Pond Road, Map 36, Parcels 35 & 39. A preliminary subdivision plan was approved on March 15, 2016.

Tim Brady and Nate Nickerson presented the proposal for a 9 lot subdivision. There followed a discussion of the road and the driveways. Mr. Brady talked about the rain garden that is being proposed. Mr. Terkanian asked about drainage soil and protection of the surrounding vegetation. Mr. Herridge said he does not have the expertise he feels that is needed for this application and suggested an independent engineer be asked to provide technical assistance. Discussion took place about what a rain garden is and how it works.

Mr. Kiernan asked about the letter from the Conservation Trust which is trying to buy the property. Mr. Nickerson said there has been discussion about that.

Mr. Riemer said he would support an independent review. Mr. Sollog revealed that he has contributed to the group that is trying to buy the property, but he feels he can be impartial.

Mr. Terkanian said that the Board needs to schedule a site visit. There was a document read into the record regarding missing items in the application.

It was mentioned that there are back taxes that have to be cleared up before the definitive subdivision can be approved.

The Planning Board has until August 29 to make a decision on this application.

Discussion ensued about the fact that a number of these lots are going to need steep driveways and run off will be an issue.

A site visit scheduled for August 4, 11:00 am.

There was mention of the traffic studies on Pond Road that were done in May and in August of last year.

Mr. Herridge made a motion to continue the hearing to August 1, 2017, Mr. Boleyn seconded. So voted, 7-0.

Discussion

Board Workshop, possible program contents, was not discussed.

Review and Approval of Meeting Minutes

June 27, 2017 Regular Meeting

There was a brief discussion of the square footage numbers for the Clark application. Mr. Boleyn moved to approve the minutes of the June 27, 2017, meeting, Mr. Herridge seconded. So voted, 7-0.

Reports from Board Members and Staff

Acting Town Planner report. There was no report.

Mr. Herridge made a motion to adjourn, Mr. Boleyn seconded. So voted, 7-0.

Meeting was adjourned at 11:05 pm.

Respectfully submitted,

Katherine Black

TRURO PLANNING BOARD

DRAFT

Meeting Minutes

August 1, 2017 - 6:00 p.m.

Truro Town Hall

Planning Board Members Present: Bruce Boleyn, Paul Kiernan, Jack Riemer, Mike Roderick, Steve Sollog, Karen Tosh. **Absent** (excused): Peter Herridge

Other participants: Regan McCarthy, Ann Greenbaum, Harry Terkanian, Interim Town Planner

Steve Sollog opened the meeting at 6:04 pm.

Public Comment Period

Regan McCarthy asked the Planning Board if they might schedule a discussion of street definitions in the near future. She is hoping for an opportunity to look at this issue as it could be important for projects proposed in the future. It might even be an article for the Town Warrant, but at least a topic for a future Planning Board agenda.

Temporary Sign Permit

Sustainable Cape: Truro Ag Fair seeks approval for four cloth banner signs 72 inches by 36 inches to be placed Friday, August 4 and removed September 4, 2017. Sign locations to be on Truro Center Road, North Pamet Road and State Highway Route 6 as per the application.

Mr. Boleyn moved to approve the application, Mr. Kiernan seconded. So voted, 6-0.

Continued Public Hearing - Definitive Subdivision Plan

2017-003PB Kristen A. Hall, Conservator for Steven F. Rogers (by Nickerson Realty Corporation, applicant) has filed an application for approval of a nine lot Definitive Subdivision Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located at 25 & 25A Pond Road, Map 36, Parcels 35 & 39. A preliminary subdivision plan was approved on March 15, 2016. Hearing continued from July 18, 2017.

Mr. Terkanian received an email last Thursday from the applicant requesting to withdraw the application. Mr. Sollog read the email acknowledging the sale of the property to the Truro Conservation Trust. Ms. Tosh read the motion to approve the withdrawal of application. Mr. Boleyn seconded. So voted, 6-0.

Definitive Subdivision Plan

2016-010PB Stephen Walsh, et al, have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property

located on Walsh Way, Walsh Way Extension and Valentine Lane, Map 43, Parcels 7, 8, 9, 10, 134 & 135. Review of draft notice of action.

Mr. Sollog asked the Board if they minded if he change the order of the agenda and go to the Walsh application next. The Board agreed. Mr. Kiernan asked for something to go into the record. This is a five lot subdivision, with two roads involved. The first segment of road is over 100 years old. Mr. Kiernan brought up that he thinks the record should reflect that for lots 4 and 5, there is no road. Mr. Boleyn agreed. They asked if lots are released where there is no road. Mr. Riemer said that he does not think that this proposal is safe. Mr. Kiernan asked if they could say that lots 4 and 5 could only be released if a road is built. Mr. Sollog said they cannot build on lots if there is no road. Mr. Riemer mentioned that the Board waived Home Owner's association, which he thinks was a mistake. Mr. Riemer said he is not satisfied. Mr. Sollog said again, they will not be able to build on the property without a road. He stated that there is nothing else they can do; they are simply reviewing the decision that the Planning Board made at the last meeting.

Definitive Subdivision Plan

2017-002PB Claire A. Perry, Trustee, has filed an application for approval of a Definitive Subdivision Plan with the Clerk of the Town of Truro pursuant to MGL c.41, §81U and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property located 27 Perry Road, Map 45, Parcel 144. Review of draft notice of action.

Mr. Kiernan said that among the conditions there was one other thing that is not listed regarding where the pavement meets the private dirt road. He thinks that where the pavement stops, gravel could be placed. Mr. Sollog said it was left as is on the Board's decision. We cannot really go back and do this over. Mr. Riemer asked if the Conservation Commission will be looking at the road and the runoff. Mr. Terkanian spoke regarding the agricultural nature of the property and what that means in terms of Conservation Commission jurisdiction. This application is on the agenda for the Monday Conservation Commission meeting. Mr. Boleyn pointed out some typos on the document. Mr. Sollog closed the review.

Residential Site Plan Review

2017-006SPR Christopher and Jane Clark, seek approval of an application for Residential Site Plan Review pursuant to §70.4 of the Truro Zoning Bylaw for demolition of an existing dwelling and construction of a new dwelling on a pre-existing nonconforming developed lot in the Seashore Zoning District. The property is located at 1 Higgins Hollow Road, Map 46 Parcel 289. Review of draft decision.

Mr. Kiernan brought up an email from John Marksbury regarding the Clark application, stating that the Clark hearing had not been closed by the Planning Board. Mr. Marksbury seemed to be asking for the hearing to be continued, since it was never closed. Mr. Kiernan said he looked at the video tape and in fact, the Board didn't close the hearing. They actually didn't close any of the hearings. Mr. Kiernan read from Board regulations

regarding the requirement to close a hearing. Mr. Terkanian said that it is usually by implication that a hearing is closed. Mr. Marksbury's letter was read into the record. Mr. Kiernan then referred to a letter from Town Counsel that the Board doesn't have the authority to try to make the Clarks preserve their house. He stated that we have 3 months to finalize the decision. Since we are invited by Town counsel to ask questions, maybe we should discuss our options. Mr. Kiernan said that this property is in violation of Truro's zoning laws, due to the second dwelling.

Mr. Sollog said one of the conditions that were agreed upon is missing from the decision.

Mr. Riemer brought up the regulation that the Planning Board must agree that everything is legal on this site, in order to approve an application. He would like to ask Town counsel's opinion on this.

Ms. Tosh also raised the issue of compliance with zoning bylaws. It's her feeling that they did not reveal their zoning violations. The Board did not receive the existing zoning information. The applicant did not allow us to look inside their buildings during the site visit. She wants to know what to do if the zoning information was not provided.

Mr. Terkanian said that the applicant did go to the ZBA. He also said that there is protection for pre-existing illegal structures. It is not clear whether or not there is a violation. If the kitchen has been there for ten years, it's too late.

Mr. Sollog said that the condition he thought was missing was actually added and is #9. He said we are not the Zoning Board of Appeals and we are not enforcement.

Ms. McCarthy came forward and asked about the current regulations and the adoption of the AADU article ("Affordable Accessory Dwelling Unit"). She asked if anyone could have an AADU inside Seashore. Can you have one on a pre-existing nonconforming lot? If the demolition of the main house occurs, then does that make the other house the primary dwelling, and how does that affect house size limits? Are there any aspects of the new ADU by-law that affect this project? Is the second structure in compliance or not? We do not have an answer.

Mr. Terkanian asked the Board what questions they want him to ask Town Counsel. On a pre-existing non-conforming lot that has two dwelling units on it, the legality of the second unit (in the seashore).

Ms. McCarthy asked about the impact of the on pre-existing non-conforming lot.

Mr. Terkanian asked the Board if they wanted him to ask Town counsel if a pre-existing non-conforming lot in the Seashore has two dwelling units, what the legality is of the second dwelling. And can the Planning Board approve a site plan that is currently in possible violation of the zoning bylaw?

The Board has until the middle of October to sign the site plan approval.

Discussion – Possible Zoning Bylaw Amendment

Discussion of possible Board action on zoning amendment(s) limiting residential dwelling size.

Chuck Steinman has been asked to look at how the Seashore amendment could be used in the rest of the Town. Most of what is needed on this is public hearings. Town Meeting has to act within 6 months of first publication of the amendment. Timing is important. Mr. Sollog said this is the opportunity.

Ann Greenbaum came forward and said that Chilmark is one town on the Cape and Islands that has a town-wide house size limitation.

Mr. Sollog said he would like to set up informal forums, with a power point presentation.

Ms. McCarthy thanked the Board for the Seashore amendment. She encouraged the Board to do that process again for a Town wide measure. 76% of properties in Truro are seasonal, so it is unlikely you will be able to get input from most property owners in the winter.

It was discussed that it might be important to move quickly and schedule meetings this summer so that the issue could be ready for the 2018 Annual Town Meeting.

Mr. Sollog said we will try to have a first get together at the end of August. Ms. Greenbaum volunteered to help.

Reports from Board Members and Staff

Acting Town Planner report

Mr. Terkanian talked about upcoming hearings and applications.

Regarding the White Sands application, the Zoning Board of Appeals met and continued the matter to August 31. The issue was that the applicants have not provided the items requested.

The attorney for the applicant has asked if they withdrew their application and reapplied, would there be another filing fee. Mr. Terkanian stated that his response was that it was a new application and a filing fee would be required.

There is an application filed for a Commercial Development Site Plan Review for 618 Shore Road on the agenda for August 15th.

The proposed road maintenance agreement for the Perry subdivision will be reviewed Aug 15th.

The Board can expect an ANR plan application soon for 402 and 408 Shore Road.

A brief discussion occurred about the subject matter of a Planning Board workshop. Mr. Sollog asked for a list of resources, maybe a bibliography.

A brief discussion occurred regarding the potential for the Board to work on a Formula business by-law. Mr. Terkanian said that they are generally unenforceable. The Town would do better to address setbacks, signage, character of the Town, etc. A formula or franchise business can be held to the same requirements as local businesses.

Mr. Boleyn made a motion to adjourn, Mr. Riemer seconded. So voted, 6-0. Meeting adjourned at 7:40 pm.

Respectfully submitted,

Katherine Black

July 2017

BP#	ID	Street Location	Owner	Type of Work	Type of Work Description	Builder	Date of Issue	Fee	Estimated Cost
17-188x	43-59	13 Whitmanville Rd	Mark Thomson	RS, RW	replace 100 sq ft of white cedar shingles, install new picture window & bay window	Raymond Roderick	7/3/2017	\$100.00	\$10,000.00
17-189	50-79	5 Slade Hill Rd	Jacqueline Bernat	Alt	remodel of interior spaces	Scott Brazil	7/5/2017	\$361.00	\$35,000.00
17-190	43-132	3 Whitmanville Rd	Robert Higgins-Steele	Add	add 16x20 1 story addition on slab	Robert Higgins-Steele	7/6/2017	\$208.00	\$50,000.00
17-191x	54-22	1 Fisher Rd	Scott & Priscilla Mather	S	8x12 shed	HO	7/6/2017	\$50.00	\$3,200.00
17-192x	40-40	6 Alden Way	Elaine Brownell	RR	reroof entire house	Paul Cazeault & Sons	7/7/2017	\$50.00	\$12,510.00
17-193x	42-20	37 Parker Dr	Philip Smith	RR	reroof entire house	Paul Cazeault & Sons	7/7/2017	\$50.00	\$17,663.00
17-194	50-105	12 Old County Rd	Janet St Onge	Solar	installation of 26 panels, 8.58 kw solar pv	Neal Holmgren, Solar Rising	7/10/2017	\$287.00	\$28,743.00
17-195x	46-172	11 Higgins Way	Cynthia Slade	RR	remove roofing on back of upper dormer and replace	James McCormick, Capizzi Home Improvement	7/11/2017	\$50.00	\$16,000.00
17-196	42-14	32 Noons Dr	John Shope	Solar	installation of 9 solar panels, 2.88kw, 320w panels	Peter Wade, My Generation Energy	7/12/2017	\$50.00	\$3,648.00
17-197	40-140	19 Andrew Way	Richard Wood	SP	installation of inground swimming pool	Jeffrey Fanara, Bella Pools	7/12/2017	\$250.00	\$25,000.00
17-198	46-392	1 Captain Williams Way	Jim Nash	SP	install fiberglass 12x24 swimming pool	Cape Cod Aquatics Pools	7/18/2017	\$520.00	\$52,000.00
17-199x	40-65	8 Hopkins Way	Robert & Lynn King	Tent	30x40 tent for 9/16/2017 wedding	Canal Fish & Lobster	7/20/2017	\$50.00	\$0.00
17-200x	54-1	20 Mill Pond Rd	Carole Reichhelm	Tent	40x60 or 40x80 tent	ABC Rent-A-Tent	7/20/2017	\$50.00	\$3,200.00
17-201x	39-137	11 Shore Rd	Truro Vineyards	Tent	15x20 tent, 44x63 tent installing on 8/26/17 and removing 8/27/2017	American Tent & Table	7/20/2017	\$50.00	\$0.00
17-202x	59-30	8 Marc Ln	Kathleen Sheehan	RR	remove existing shingles on entire house and install new	Paul Cazeault & Sons	7/26/2017	\$50.00	\$9,579.00
17-203x	32-32	6 Arrowhead Farm Rd	Cynthia Turner Berg	RW	Garage --> replace 1 existing window and add 1 new window	HO	7/26/2017	\$50.00	\$1,800.00
17-204x	32-32	6 Arrowhead Farm Rd	Cynthia Turner Berg	Alt	add insulation to garage gable end wall and adjacent interior wall; install plywood paneling	HO	7/26/2017	\$50.00	\$1,000.00

TOTALS: \$2,276.00 \$269,343.00

17 TOTAL PERMITS
5 CERTIFICATES OF COMPLIANCE

Copied from the Town of Chilmark Zoning Bylaws on August 3, 2017. See:
http://www.chilmarkma.gov/Pages/ChilmarkMA_ZBA/ZBABY-LawsTOC

From Article 2 Definitions:

Total Living Area Section 2.24

Total Living Area means the aggregate area of all habitable space, which is generally based on the sum of the exterior dimensions of each above-grade level of a structure but does not include decks or porches, even if roof covered or enclosed by walls or screening. The measurement includes all Dwellings and Accessory Structures, or portions thereof, that are habitable. It also includes indoor swimming pools; indoor tennis, squash or similar courts; and similar indoor facilities.

From Article 6 Dimensional and Density Requirements:

Residential Building Size Regulations Section 6.11

A. Purpose: The purpose of this Section is to ensure that residential construction is designed and carried out in a manner consistent with the purposes and objectives set out in Article 1 of these Zoning Bylaws. Section 6.11 seeks to ensure that future residential development: does not overwhelm Chilmark's rural atmosphere; does not detract from its geographic diversity – its seashore, ponds, stonewall boundaries, open agricultural space – or the vistas from its roadsides; is built in scale with past development practices with regard to bulk and building coverage; preserves the existing and historic rural development pattern and character of the Town as set forth in the Town Master Plan; and does not have undue adverse environmental impacts.

B. Applicability and Exceptions

1. Total Living Area limit: Subject to the exceptions provided for in subsections B.2 and B.3, below, building permits for new construction or for projects that seek to increase the Total Living Area of a lot with buildings that exist as of April 22, 2013, shall only be issued where, on completion of the project, the Total Living Area of the lot does not exceed 3500 sq ft for 3 acres:

- a. plus 250 sq ft for each additional contiguous acre; or
- b. minus 250 sq ft for each contiguous acre less than 3 acres, as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.

2. Special Permit to exceed the Total Living Area limit: The Total Living Area limit for a lot established in subsection B.1 may be exceeded, up to the cap established by this subsection, by special permit, as provided in the remaining provisions of this Bylaw. Subject to the exception provided for Chilmark Zoning Bylaws 2016 6 - 10 in subsection B.3, no special permit may be issued for any project if the project would result in the Total Living Area of the lot exceeding 6000 sq ft for 3 acres:

- a. plus 250 sq ft for each additional contiguous acre; or

No building permit may be issued hereunder unless the Zoning Board of Appeals has granted a special permit.

D. Hearing before the Zoning Board of Appeals: The Zoning Board of Appeals must hold a hearing within 65 days after the filing of an application for a special permit, notice of which shall be given at least 14 days prior to the date thereof. Notice shall be provided in accordance with the procedure set out in the Zoning Act. In addition to persons entitled to notice under the Zoning Act, the Zoning Board of Appeals may determine to also provide notice to:

1. property owners who would be considered abutters if a relevant public body of water were treated as if it were a public road; and/or
2. property owners within 1000 feet of the applicant's property; and/or
3. any road or pond association of which the applicant is entitled to membership; and/or
4. all Town commissions and boards having jurisdiction over any aspect of the applicant's project. Any notice in addition to that required under the Zoning Act shall be at the expense of and otherwise solely the responsibility of the Town. The applicant is encouraged to participate directly in person at the hearing.

E. Documentation for a Hearing: The applicant must provide schematic architectural drawings (ie scale dimensional drawings including a site plan, floor plans, sections and elevations) prior to the hearing. To assist the Zoning Board of Appeals in its deliberations, the Zoning Board of Appeals may:

1. require the applicant to furnish a model or computer rendering of the project and the surrounding area or other visual aid and such other information as the Zoning Board of Appeals considers necessary; and
2. engage experts, including architects, engineers and consultants, and assess the applicant a fee(s) to reimburse such expenses.

F. Consideration by the Zoning Board of Appeals: In reviewing an application for a special permit under this Section 6.11, the Zoning Board of Appeals must consider the report, if any, of the Site Review Committee and, in addition, whether:

1. the project, when complete, would be visible, including during the winter, from public ways, water bodies, cemeteries and neighboring properties, and if so whether:
 - a. the impact of the project on the existing rural, scenic character of the site and the surroundings has been mitigated through building siting, building design and landscape design;
 - b. the project retains natural buffer areas or, where that is impracticable, provides sufficient landscape screening; and

G. Determination by the Zoning Board of Appeals: In considering the issues set out in Section F, the Zoning Board of Appeals must determine, as applicable, the degree of impact and any mitigating factors. If the Zoning Board of Appeals determines that the project has adequately addressed all relevant issues so that the concerns have been substantially mitigated, it may grant a special permit, which may contain conditions that mitigate the impact or otherwise ensure that the project is consistent with the purpose of this Section 6.11. Such conditions may include a deed restriction against future development and/or subdivision of the property. Any special permit granted under this bylaw shall lapse if the Building Inspector determines that substantial construction has not commenced within two years from the grant thereof including the time required to pursue and await the determination of any appeal thereto, except for good cause. Chilmark Zoning Bylaws 2016 6 - 13

H. Other Approvals/Amendments: The procedure set out in this Section 6.11 is not exclusive of any other permit or approval that the applicant may otherwise be required to obtain. Amendments made to any element of the project, pursuant to or as a condition of any permit approval granted by any authority under these bylaws or otherwise, will require a further hearing before the Zoning Board of Appeals with notice as set out above.

I. Biennial Review: There shall be a joint Zoning Board of Appeals and Planning Board meeting on a biennial schedule to review the efficiency and address unexpected consequences created by this regulation and they shall report to the town meeting their findings and recommendations of this joint committee.

ARTICLE XX: AMEND ZONING BYLAWS §50, AREA AND HEIGHT REGULATIONS TO LIMIT BUILDING SIZE IN TRURO'S RESIDENTIAL ZONING DISTRICT

To see if the Town will vote to amend the Town of Truro Zoning Bylaw Section 10.4, Definitions, and Section 50, Area and Height Regulations, by adding a new Section 50.2 (new text shown as **bold**), or take any other action relative thereto. *Requested by the Planning Board.*

In Section 10.4 *Definitions*, insert the following new definition:

Residential District Total Gross Floor Area. The aggregate gross floor area of the dwelling and accessory structures on a lot within the Residential District shall consist of the sum of the horizontal areas of the floor(s) of a building measured from the exterior faces of the exterior walls of the building, without deduction for hallways, stairs, closets, and thickness of walls, columns or other features used or intended to be used for living, sleeping, sanitation, cooking or eating purposes, excluding cellar and basement floor area, garage, porches, decks, attics, barns, greenhouses, sheds, and agricultural buildings.

For the purposes of computing floor area, any portion of the floor area measuring less than five feet from the finished floor to the finished ceiling shall not be included in the computation of floor area.

Section 50.2 Building Gross Floor Area

- A. Purpose: This Section regulates the size of residential buildings on lots within the Residential District by establishing a relationship between building volume and lot size that is consistent with Truro's historical development and character, as described in the Truro Local Comprehensive Plan, Chapter 1—A Vision for Truro, and Chapter 2—Land Use. □**
- B. Applicability and Exceptions □**

1. Residential District Total Gross Floor Area Allowed by Right: Subject to the exceptions provided for in subsections 50.2.B.2 and below, building permits for new construction or

for projects that seek to increase the Residential District Gross Floor Area of buildings that exist on lots as of April xx, 2018, shall only be issued where, on completion of the project, the Residential District Total Gross Floor Area of the lot does not exceed 3,600 sq. ft. for 3 acres:

plus 200 sq. ft. for each additional contiguous acre; or

minus 200 sq. ft. for each contiguous acre less than 3 acres,

as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.

(See illustrative table for the Seashore District Section 30.3)

2. Special Permit to exceed the Residential District Total Gross Floor Area limit: The Residential District Total Gross Floor Area limit for a lot established in subsection B.1 may be exceeded, up to the cap established by this subsection, by special permit, as provided in the remaining provisions of this Bylaw. No special permit may be issued for any project if the project would result in the Residential District Total Gross Floor Area of the lot exceeding 4,600 sq. ft. for 3 acres:

plus 200 sq. ft. for each additional contiguous acre; or

minus 200 sq. ft. for each contiguous acre less than 3 acres,

as the case may be, where the square footage per acre specified above is pro-rated for a portion of an acre.

(See illustrative table for the Seashore District Section 30.3)

C. Procedures for Special Permit Review and Approval: Upon receipt of an application for a building permit the Building Commissioner shall make an initial determination as to whether any alteration, construction or reconstruction of a building or structure would result in the Residential District Total Gross Floor Area exceeding the limitations set out in Section 50.2.B.1. If

the Building Commissioner determines that the applicant cannot proceed without a Special Permit, the applicant must apply to the Zoning Board of Appeals for a Special Permit. No building permit shall be issued hereunder unless the Zoning Board of Appeals has granted a Special Permit according to procedures as defined elsewhere in this Bylaw.

D. When required, an application for a Special Permit shall be made to the Zoning Board of Appeals. Notice shall be given of all applications for a Special Permit hereunder in accordance with Section 60.4 (Notice Requirements) of these bylaws. A Special Permit may be granted where the Zoning Board of Appeals finds that the proposed construction is consistent with the criteria found in Section 30.8 (Special Permits) of the bylaws. In making this determination the Zoning Board of Appeals shall consider the size of neighboring buildings and the surroundings in which construction is proposed.



TOWN OF TRURO

Planning Department

P.O. Box 2030, Truro, MA 02666
Tel: (508) 349-7004, Ext. 127 Fax: (508) 349-5505
hterkanian@truro-ma.gov

To: Truro Planning Board
From: Harry Sarkis Terkanian, Acting Town Planner
Date: July 31, 2017
Re: Bibliography of Planning Resources

Much of the materials referenced here can be found in the *Truro Planning Board Handbook & Policies*. The following materials provide guidance on matters that can come before the Planning Board:

The General Laws, particularly the following:

1. The Open Meeting Law, MGL c. 30A, §§20 – 25
2. The Subdivision Control Law, MGL c. 41, §§81K – 81GG
3. The Zoning Act, MGL c. 40A
4. The Conflict of Interest Law, MGL, c. 268A

The Massachusetts Department of Housing and Community Development maintains a series of zoning and land use publications online, see:

<http://www.mass.gov/hed/community/planning/zoning-resources.html>

Attached are the following:

The Basics of Subdivision Control Law by Daniel C. Perry. This is a good introduction to the subject.

Memorandum dated July 31, 2017 outlining the process for amending zoning bylaws.

Memorandum dated August 3, 2017 listing the basis for Planning Board jurisdiction on certain filings.

Subdivision Control Law “table of contents”

THE BASICS OF SUBDIVISION CONTROL LAW

AN OVERVIEW

by Daniel C. Perry
New Bedford, Massachusetts

I. The Statute

The Massachusetts Subdivision Control Law is codified at Massachusetts General Laws chapter 41, sections 81K through 81GG. The statute only becomes effective in a given municipality upon acceptance, and does not apply within the City of Boston. See section 81N. Acceptance has become nearly universal. The Town of Gosnold (which consists of the Elizabeth Islands, and may or may not have any public ways) has not accepted the statute; the author is unaware of any other exceptions.

II. The Structure of the Law

The Subdivision Control Law empowers municipal planning boards (or their predecessors, "boards of survey") to regulate "subdivisions." The statutory definition in section 81L is a term warranting attention and has important exceptions. The statute does not regulate every transaction that creates new property lines. It only applies to the creation of new "lots," which are defined by section L as "an area of land in one ownership, with definite boundaries used, or available for use, as the site of one or more buildings."

Generally, the definition of "subdivision" excludes from planning board regulation any division of land that creates new lots if every lot has adequate frontage (that is, the frontage required by the Zoning By Law, or if there is no requirement, at least 20 feet) on either of the following three types of "ways": (a) a public way, or (b) a way shown on a plan previously approved by the planning board under the Subdivision Control Law, or (c) a way in existence when the Subdivision Control Law became effective in the city or town where the land lies, having in the opinion of the planning board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such lands and the buildings erected or to be erected therein.

Thus, the Massachusetts Subdivision Control Law limits the regulatory power of planning boards, as a matter of statutory jurisdiction, to **new roads that provide zoning frontage**. If a landowner can find adequate frontage on a "way" that qualifies for one of the exceptions, the planning board has no jurisdiction.

If a landowner wishes to make a statutory subdivision he must prepare a plan that contains data and shows proposed improvements as required by the planning board. The planning board's requirements must be codified in their **regulations**, which the board must

promulgate in accordance with statutory procedures that are set forth in chapter 41, section 81Q.¹ The planning board's power is constrained by its own regulations. The board **must approve** a plan that conforms to the board's regulations unless it does not comply with recommendations of the board of health, or violates the Zoning By Law. Further, regulations must be "reasonable" and "not inconsistent with the Subdivision Control Law or any other provision of a statute or of any valid ordinance or by law of the city or town." Section 81Q.

III. Recording Plans That Do Not Show Subdivisions.

Although the Subdivision Control Law is enforced by the building inspector and others, its most effective enforcement mechanism is the mandate contained in chapter 41, section 81X, that registries not accept for recording plans that do not comply with the statute's requirements.² There are two exceptions to the requirement that a plan of land be approved by the planning board under the Subdivision Control Law before being accepted for recording.

First, chapter 41, section 81P, requires the planning board to endorse "forthwith" a plan with the notation "approval under the subdivision control law not required" if the plan does not show a statutory "subdivision". These plans are often referred to as "ANR" plans or "Form A" plans (the latter reference is to the initial form in most planning board regulations). There is no notice, advertising or public hearing requirement for this endorsement. The statute provides that such endorsement is "conclusive on all persons," and the Appeals Court has held that, once given, the endorsement cannot be rescinded. Cassani v. Planning Board of Hull, 1 Mass. App. Ct. 451 (1973). Such plans may be recorded at the Registry of Deeds. Failure of the board to act on a plan within twenty-one days of receipt results in constructive determination that approval is not required and an applicant is entitled to a certification from the municipal clerk as to that failure to act, which in turn entitles the applicant to record the plan. See Section 81P.

Second, chapter 41, section 81X, provides that a surveyor may certify that the property lines shown on a plan are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and such plan shall be accepted for recording by registers of deed.

IV. The Approval Process.

A. Preliminary Plans. Section 81S.

Chapter 41, section 81S, gives an applicant the option, if it is a residential subdivision, and requires the applicant, if it is a "nonresidential subdivision", to file a preliminary plan. A board's requirements for content of a preliminary plan are set forth in its regulations. Generally, they require considerably less detail concerning topography, drainage and details for utility services than the final "definitive" plan. The board is required to take action on a plan--approve, disapprove or approve with modifications--within forty-five days.

¹ Generally, section 81Q requires public hearings with advertising before promulgation, as well as recording with the appropriate Registry of Deeds.

² It is unlawful to create a "subdivision by deed" alone. Any description of land that describes new boundaries must refer to a plan. See M.G.L. c. 183, § 6A.

The preliminary plan process, as a practical matter, has little legal consequences. It is an opportunity for discussion and preliminary negotiation and airing of concerns and issues before detail drawings are prepared and filed. There is no public hearing or notice to abutters, and approval or disapproval by the board does not foreclose different action in the future. A preliminary plan cannot be recorded.

Filing a preliminary plan can be the basis for zoning freezes, if a definitive plan is filed within seven months. See M.G.L. chapter 40A, section 6.

B. Filing the Definitive Plan. Sections 81O, 81T and 81U.

A plan is filed by delivery to the planning board at a regular meeting, or by mailing certified mail to the planning board. Filing is effective upon receipt. Section 81O. When the plan is filed, written notice must be given to the municipal clerk. Section 81T. A copy must also be submitted to the board of health. Section 81O. The number of copies and other requirements concerning submission, including a form (Form C) that requires the owner's signature, are customarily set forth in the planning board's regulations, which should be carefully reviewed.

C. The Board of Health.

The board of health's powers in the subdivision process, as established by case law, are extremely broad. Indeed, if the board disapproves the plan or the applicant does not agree to modify the plan to conform to its modifications, then the planning board has no choice but to disapprove the plan. The statute does not call for any procedural requirements in connection with the board of health action. However, in Fairbairn v. Planning Board of Barnstable, 5 Mass. App. Ct. 171 (1977), the Appeals Court established procedural safeguards for negative action by the board of health. Fairbairn requires the applicant to request a hearing at the time he files a plan, so practitioners are well advised to make such a request at the time of filing.

The concerns that the board can address are broad but not limited. Section 81M states that one purpose of the law is to ensure "sanitary conditions in subdivisions," and courts have sustained board of health decisions regulating drainage and sewage disposal. The board cannot, however, disapprove a plan because of concerns regarding the presence of hazardous waste on the property. Independence Park v. Board of Health of Barnstable, 25 Mass. App. Ct. 489 (1988). Generally, the board of health's concerns are centered on septic systems, and, to a lesser extent, surface and drinking water issues. Sometimes boards make no comment on plans. If the board of health fails to comment on a plan within forty-five days after filing, such failure is deemed to be approval. Section 81O.

D. The Public Hearing.

Section 81T requires that the planning board conduct a public hearing on the subdivision after advertising twice in a local newspaper, and mailing a copy of the advertisement

to all abutters of the property. The public hearing is an opportunity for all persons interested to state their views. There is no suggestion in the case law that the hearing is adjudicatory, or that the planning board record is limited to information that it receives during the public hearing, as is the case, for example, for a zoning board of appeals.

E. Waiver.

As a practical matter, almost no subdivision complies with all the regulations of a planning board. Section 81W permits the planning board to waive strict compliance with its rules and regulations where such action is (1) "in the public interest" and (2) "not inconsistent with the intent and purpose of the subdivision control law." Further, the board, may, where circumstances warrant, impose conditions limiting the number of lots, buildings and limiting the time "for which particular buildings may be maintained." The waiver process allows for frank negotiation and swapping between applicant and planning board.

The board has considerable discretion in granting waivers. It is practically impossible to reverse a decision of the planning board based on the public interest standard; "if in a given case [the decision] is one as to which reasonable minds [may] differ, . . . [the decision of] the planning board should be sustained on judicial review." Arrigo v. Planning Board of Franklin, 12 Mass. App. Ct. 802, 809 (1981). Decisions have suggested that there is more judicial oversight warranted as to the second factor, consistency with the intent and purpose of the Subdivision Control Law, Arrigo, supra at 804, although at the same time courts have stated that reversal based on that standard would have to be based on "substantial" grounds. Id.³ The burden of proof on a frustrated applicant who has not received a waiver seems equally high. See Canter v. Planning Board of Westborough, 7 Mass. App. Ct. 805 (1979).

The procedural requirements for a waiver are not exacting. Unlike zoning decisions, no findings of fact are required to support waiver. Arrigo, supra, 12 Mass. App. Ct. at 808. Indeed, the board decision does not need to list the waivers granted, as long as the record as a whole discloses evidence of a conscious decision to grant the waiver. Meyer v. Planning Board of Westport, 29 Mass. App. Ct. 167 (1990). (The prudent practitioner should not rely on Meyer and should give the board a clear list of waivers requested.)

F. Security.

Section 81U obligates the planning board to obtain security that the roads and municipal services required by the plans will be constructed before it endorses a definitive plan after approval. Generally, this security falls into two categories: (a) financial security, which can include a surety bond, passbook or deposit of monies with the Town Clerk, letter of credit or similar arrangement whereby the board can have access to funds to pay for construction of improvements after a default, or (b) a "covenant" executed by the applicant, the owner and any mortgagees of record, and recorded with the Registry of Deeds, as well as noted on the plan,

³ A case finding that the burden was met was Wheatley v. Planning Board of Hingham, 7 Mass. App. Ct. 435 (1979), where the Court found that the approved plan made inadequate provision for securing installation of certain indispensable services.

whereby the applicant undertakes not to sell any lot or construct any building until the roads and municipal services necessary to serve that lot have been constructed.

Security is often used in combination; a developer will give financial security to permit sale of one phase of the project that will be built out first, and leave the remainder of the subdivision burdened by the covenant.

Approval of a plan does not expire. (Although zoning protection does, eight years after endorsement. See M.G.L. c. 40A, § 6.) Some boards insert in their regulations covenants requiring construction within a stated period of time unless extended by the planning board.

G. Approval. Section 81U.

The planning board has three statutory options: it may approve the plan, it may approve the plan with modifications, or it may disapprove the plan. Section 81U. The board must take final action on the plan within ninety days if there has been a preliminary plan, or one hundred thirty-five days if there has been no preliminary plan. Failure to take action (or to file a certificate of such action with the municipal clerk) within such time results in constructive approval.

Approval must be evidenced by a certificate of the planning board action filed with the city or town clerk. This act starts the twenty day appeal period running under M.G.L. c. 41, section 81BB. (The appeal period also starts when there has been constructive approval by failure to act.)

After the appeal period has run, and after the planning board has approved the security of the applicant, the board endorses its approval of the plan, (which may have been redrawn by the applicant to reflect modifications required) and note on the plan any conditions of approval, as well as any covenant to be recorded with the plan.⁴ That endorsement entitles the applicant to record the plan.

The planning board is required to release the security given by the applicant upon satisfactory completion of the construction of the roads and installation of municipal services. Section 81U specifies the procedures for applying for such release, and creates a "default release" provision if the board fails to act on a request within forty-five days.

V. Modification and Rescission. Section 81W.

Planning boards have broad powers to modify, amend or rescind their approval of plans, either at the request of the applicant or at their own initiative. Section 81W specifies that the provisions for submission and approval of a plan shall apply to modification, amendment or rescission, "so far as apt." This requires submission to the board of health, a public hearing with

⁴ The board only endorses the sheets of the definitive plan that show lot layout for title description purposes. The submission includes many sheets depicting design detail of roads, drainage, utilities, etc., that do not get endorsed or recorded.

notice and advertising, filing a certificate of approval and rights of appeal. The planning board may rely on the record previously made in the original approval proceedings.

Section 81W protects good faith purchasers, and provides that rescission cannot affect lots that have been sold or mortgaged in good faith after approval, but this prohibition does not apply to sale or mortgage of all the land shown on the plan or all land not previously released.

Rescission is a remedy that affords continuing power to a planning board that has slipped up and missed deadlines.⁵ Thus, applicants should bear in mind when they have a default approval, that they may need to continue negotiations with the board in a rescission setting. The power of the board to rescind cannot be exercised without good reason, but failure of a constructively approved plan to comply with the rules and regulations of the board is a proper reason. Pierce v. Town Clerk of Rochester, 3 Mass. App. Ct. 728 (1975).

Formal modification of a plan is required any time the physical layout of roads is changed. However, a reconfiguration of lot lines without changing road layout on an approved plan does not require amendment of a plan (Section 81O), and can be accomplished by submitting an "approval not required plan" under M.G.L. c. 41, section 81P.

⁵ The Appeals Court has noted that exercise of this power "is a well worn, although a rather circuitous, way out of the blunder." Windsor v. Planning Board of Wayland, 26 Mass. App. Ct. 650, 656 (1988).



TOWN OF TRURO

Planning Department

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To: Truro Planning Board
From: Harry Sarkis Terkanian, Acting Town Planner
Date: July 31, 2017
Re: Procedure for Amendment of Zoning Bylaws

The process for amending a zoning bylaw is specified by section 5 of the Zoning Act (MGL, c. 40A). An outline of the process is as follows:

1. Initial submission of a proposed amendment is to the Board of Selectmen. A proposal may be submitted by the selectmen, zoning board of appeals, planning board, regional planning agency, an owner whose land would be affected by the proposal or ten citizens (see MGL c. 39 §10)
2. The selectmen transmit the proposal to the planning board within 14 days of filing.
3. The planning board holds a hearing within 65 days of receipt of the proposal. There are specific notice requirements including publication in two successive weeks, with the first publication at least 14 days before the hearing. (See MGL c. 40A §5 for specific requirements)
4. The planning board files its report with the town meeting (or 21 days elapse after the hearing without a report).
5. The town meeting must act within six months of the hearing date or the process must be restarted with a new hearing and new notice. Note that section 6 of the Zoning Act provides that building permits and special permits must comply with the proposed bylaw after the date of first publication of the planning board hearing.



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To: Truro Planning Board
From: Harry Sarkis Terkanian, Acting Town Planner
Date: August 3, 2017
Re: Statutory Basis of Planning Board Jurisdiction

The following is a list of matters which come within Planning Board jurisdiction and the statutory or bylaw authority for exercise of jurisdiction.

I. Types of Filings:

- a. Subdivision Control Law - MGL c. 41, §§81K – 81GG
 - i. Preliminary Subdivision Plan – requires notice to abutters only, approval, MGL c. 41, §81S
 - ii. Definitive Subdivision Plan – requires public hearing, MGL c. 41, §81U
 - iii. Approval Not Required Plans – no notice or hearing, endorsement, MGL c. 41, §81P
 - iv. Modification, Amendment or Rescission of Subdivision Plan – requires public hearing, MGL c. 41, §81W
 - v. Acceptance of Private Roads – Truro Subdivision Regulations §5
- b. Zoning Bylaw (all require a public hearing)
 - i. Affordable Accessory Dwelling – Special Permit, MGL c. 40A §9, Zoning Bylaw §40.2
 - ii. Cottage Colony Conversion - Special Permit, MGL c. 40A §9, Zoning Bylaw §40.3
 - iii. Wind Generation – Special Permit, MGL c. 40A §9, Zoning Bylaw §40.4
 - iv. Communications Structures – Special Permit, MGL c. 40A §9, Zoning Bylaw §40.5
 - v. Large Scale Ground Mounted Solar Arrays – Planning Board review, permit “as of right” if in compliance with bylaw, MGL c. 40A, Zoning Bylaw §40.7
 - vi. Commercial Site Plan Review – “approval”, MGL c. 40A, Zoning Bylaw §70.3
 - vii. Residential Site Plan Review – “approval”, MGL c. 40A, Zoning Bylaw §70.4
 - viii. Open Space Development – Special Permit, MGL c. 40A §9, Zoning Bylaw §80.1
- c. Sign Code (no notice or hearing requirements)
 - i. Temporary Sign Permits – Sign Code Bylaw §11

Subdivision Control Law References in MGL chapter 41:

- §81K Designation of 81K to 81GG as the “subdivision control law”
- §81L Definitions
- §81M Purpose
- §81N Territorial Extent; Acceptance by Municipalities
- §81O Regulation of New Subdivisions
- §81P ANR Plans
- §81Q Planning Board Rules & Regulations
- §81R Waiver of Strict Compliance with Rules and Regulations (statement of conditions of approval)
- §81S Preliminary Subdivision Plans
- §81T Submission of Definitive Plans; Hearing
- §81U Approval, Modification, Disapproval & Prerequisites for Decision
- §81V Final Approval; Endorsement
- §81W Modification, Amendment or Recession of Approval
- §81X Requirements for Recording
- §81Y Restrictions on Construction of Ways and Buildings
- §81Z Board of Appeals (Buildability under §81Y)
- §81AA Board of Appeals Procedure
- §81BB Appeal to Superior Court
- §81CC Planning Board Power to Enter On Land (in connection with the subdivision control law only)
- §81DD Application of Law; Damages
- §81EE Recording Evidence that Subdivision Law is in Effect
- §81FF Application of Subdivision Control Law to Registered Land
- §81GG Powers of Planning Boards Established Under Prior Law