Truro Planning Board Agenda

Remote Meeting

Wednesday, February 22, 2023 – 5:00 pm

www.truro-ma.gov

AMENDED

Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream. Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at 1-866-899-4679 and entering the access code 139-812-429# when prompted. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing Liz Sturdy, Planning Department Administrator, at *esturdy@truro-ma.gov*.

Meeting link: **https://meet.goto.com/139812429**

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.

1. **Planner Report**

2. **Chair Report**

3. **Minutes**
   - December 14, 2022

Public Hearing – Continued

2023-001/SPR – Ebb Tide on the Bay Condominiums, for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds Book 5671 and Page 232). Applicants seek Commercial Site Plan approval for project involving move of three buildings shoreward; relocation of septic system; and related modifications to site; on property located in the Beach Point Limited Business District. [*Material in 2/8/2023 packet*] {*New material included in this packet*}

Warrant Article Discussion

Discussion of Potential Scenic Road Recommendations

- Mill Pond Road

Next Work Session: Discussion
Next Meeting: Wednesday, March 22, 2023 at 5:00 pm
Note: Meeting of March 8, 2023 Cancelled

Adjourn

TOWN OF TRURO

PLANNING BOARD
Meeting Minutes
December 14, 2022 – 5:00 pm
REMOTE PLANNING BOARD WORK SESSION

Members Present (Quorum): Anne Greenbaum (Chair); Rich Roberts (Vice Chair); Jack Riemer (Clerk); Paul Kiernan; Ellery Althaus; Caitlin Townsend; Virginia Frazier

Members Absent:

Other Participants: Town Planner/Land Use Counsel Barbara Carboni; ZBA Vice Chair Chris Lucy; Planning Board Administrator Liz Sturdy

Remote meeting convened at 5:10 pm, Wednesday, December 14, 2022, by Chair Greenbaum who announced that this was a remote public meeting aired live on Truro TV Channel 18 and was being recorded. Town Planner/Land Use Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment. Members introduced themselves to the public.

Public Comment Period

Public comment, for items not on the agenda, was opened by Chair Greenbaum and there were none.

Minutes

Chair Greenbaum led the discussion and review of the minutes of the October 19, 2022, meeting. Member Reimer requested to amend the minutes regarding the matter of **2022-006/PB – Matthew Bramble and Murray Bartlett** to include his comments into the record during a time-specified (16:30 to 17:35 on the meeting video) portion of the hearing. Chair Greenbaum stated that she would get those comments added to the revised minutes. Until then, without opposition, there was no vote on these minutes.

Chair Greenbaum led the discussion and review of the minutes of the November 16, 2022, meeting. No edits or corrections were made.

Prior to the vote on these minutes, Member Riemer asked Chair Greenbaum, in the case of public hearing **2022-011/SPR**, held on November 16, 2022, if the Natural Heritage and Endangered Species Act Inquiry discussed in the hearing was included in the Members' packets or not. Member Riemer noted that this was a necessary item for a Site Plan Review in the National Seashore District. Chair Greenbaum replied that she will check with Planning Board Administrator Sturdy.

Member Althaus made a motion to approve the November 16, 2022, meeting minutes as submitted.
Member Riemer seconded the motion.
So voted, 7-0-0, motion carries.

Chair Greenbaum announced that there were no applications to be considered at next week's meeting, so Members were asked if they were in favor to cancel next week's meeting. There was no opposition to the cancellation of next week's meeting and there was no vote.

Planner Report

Town Planner/Land Use Counsel Carboni reported that she is working with Health & Conservation Agent Emily Beebe on a potential Bylaw amendment of either an Overlay District or rezoning of the corridor along Highland Road to allow multi-family housing. Town Planner/Land Use Counsel Carboni said that she and Health & Conservation Agent Beebe met yesterday for the first time to discuss this matter. Town Planner/Land Use Counsel Carboni will keep Members informed as things progress.

Members briefly discussed the sensitivity towards the two Business Districts in Truro and the delineation of the specific area being considered (Highland west of Route 6 to Shore Road).

Vice Chair Roberts asked if there was a recent Building Report and Town Planner/Land Use Counsel Carboni emailed it immediately to the Members.

Chair Report

No report was given.

Potential Warrant Articles

Chair Greenbaum asked Vice Chair Roberts to guide the discussion and asked Members to consider pathways for solutions. Vice Chair Roberts provided some thoughts on simplicity and understandability versus things which are comprehensive and adequate to protect the Town.

Vice Chair Roberts then reviewed the language for each paragraph of the listed potential Warrant articles with the Members. Members and Town Planner/Land Use Counsel Carboni provided comments and suggested edits.

1. "Street" Definition
    - Reviewed 10.4 Definitions
    - Reviewed New Section 30.11 Streets and Frontage
        A. A. Purpose
        B. Ways Prequalified As "Streets"
        C. General Qualifications (newly created)
        D. Approval of Geometric
        E. Approval by Geometric (Quantitative) Means
        F. Approval by Qualitative Means
        G. Recording

Prior to the discussion of Section E, Approval of Geometric (Quantitative) Means, Chair Greenbaum asked Vice Chair Roberts to create a new draft that eliminates Section D. Chair Greenbaum then invited ZBA Vice Chair Lucy to comment. ZBA Vice Chair Lucy commented that he was unsure as to what would

compel an individual to enter this process with the Planning Board instead of the ZBA. ZBA Vice Chair Lucy noted that this process may be of interest to a homeowner association with dirt roads instead of an individual who goes through the process discussed earlier. Other topics discussed were maintenance of the roads and the length of time that can elapse prior to a determination decision expiring.

Vice Chair Roberts thanked the Members for the lively discussion and input. Vice Chair Roberts added that he will prepare two versions based upon tonight's discussion, one with Section D and one without it for the next meeting.

Chair Greenbaum announced that the next meeting will be on January 11, 2023.

2. Duplex Bylaw

Due to time constraints this evening, the Duplex Bylaw will be discussed at a meeting in January 2023.

3. Undersized Lots

Chair Greenbaum noted that the Ad Hoc Committee will take up the discussion of Undersized Lots for affordable housing at the suggestion of Chair Kevin Grunwald of the Housing Authority. A meeting occurred yesterday, and Member Althaus provided a brief update to include the discussion for the need of a Town housing coordinator. There will be a follow-up meeting in January with more detail and assigning individuals with specific tasks.

Member Riemer made a motion to adjourn the meeting at 6:48 pm.
Vice Chair Roberts seconded the motion.
So voted, 7-0, motion carries.

Respectfully submitted,

Alexander O. Powers
Board/Committee/Commission Support Staff

TOWN OF TRURO

TRURO, MASSACHUSETTS

The Board of Appeals, at a public hearing conducted on November 21, 1985

and in accordance with the provisions of Massachusetts General Law, Chapter 40A, and after considering the application by Edward Brigman, Elaine Tortora-Brigman and Frank M. Tortora for a special permit

for property located at Route 6A, North Truro

approved/~~disapproved~~ the Special Use Permit/~~Variance~~ for conversion to condominium

by a vote of 5 for approval, 0 for disapproval, the members voting:

APPROVAL	DISAPPROVAL	PRESENT NOT VOTING
Bednarek	none	Connor
Corea		
Pope		
Rose		
Weinstein		

In reaching its decision, the Board made the following findings:

1. The Board voted to approve the condominium conversion subject to the October 1985 revised process for conversions, and subject to Sect. VIIIB of the zoning by-laws, with the condition that parking spaces be marked and assigned.

2. The number of condominium units is limited to 4 units in the westerly building, 1 unit in the middle building, and 1 unit in the easterly building, for a total of 6 units.

3.

4.

The Special Use Permit/Variance is approved subject to the following conditions and/or limitations: See ABOVE Chm. Board of Appeals

A copy of the minutes of the hearing is filed with this decision and available at the office of the Town Clerk.

I hereby certify this as a true and accurate record of the Board of Appeals.

DATE: November 26, 1985

BY: Robert Bedrosian
Truro Board of Appeals

Received office of the Town Clerk: _____

DATE: November 26 1985

Cynthia Slade (DC)
Town Clerk, Town of Truro

NOTICE:

Any person aggrieved by a decision of the Board of Appeals or any special permit granting authority, whether or not previously a party to the proceeding or any municipal officer or board may appeal to the Superior Court or to the Land Court by bringing action within 20 (twenty) days after the decision has been filied in the office of the Town Clerk. Notice of the action with a copy of the complaint shall be given to the Town Clerk so as to be received within 20 (twenty) days (for appeal procedure see Massachusetts General Laws, Chapter 40A, Section 17).

I hereby certify that this decision was filed with the office of Town Clerk on _____ and 20 (twenty) days have elapsed from the date of filing and no notice of appeal has been received by this office.

_____
Town Clerk, Town of Truro

Joseph Paul Gargolinski
Attorney at Law

Oak Road
P. O. Box 208
North Eastham, MA 02651-0208
Tel. (617) 255-5423

Received 9/20/85
hand-delivered by
Stephen Lapham
Cape Cod Savings
Truro Club

September 19, 1985

Truro Zoning Board of Appeals
Truro Town Hall
Truro, MA 02666

Re: Application for Special Permit - Frank M. Tortora et al

Gentlemen:

Enclosed herewith please find the application for special permit to be submitted inconjunction with the appeal from the decision of the Building Inspector heretofore submitted by Frank M. Tortora.

We would deeply appreciate your assistance in having these matters marked for hearing at your next monthly meeting of the Truro Zoning Board of Appeals.

Very truly yours,

Joseph P. Gargolinski
By: Joyce Davis, Secretary

JPG/jd

Encls.

RECEIVED
SEP 23 1985
TRURO BD
OF APPEALS

TOWN OF TRURO
APPLICATION FOR SPECIAL USE PERMIT
(Filing Fee $50.00) 50 00

APPLICATION NOT ACCEPTABLE UNLESS ALL QUESTIONS COMPLETELY ANSWERED

1. Name of Applicant Edward Brigman, Elaine Tortora-Brigman
   Address Frank M. Tortora
   356 Beech St., Roslindale, MA 02131

2. (a) Description and Location of property for which application is made certain parcel of land shown as Lot 2 on plan of land duly recorded Plan Book 348, Page 97, Barnstable County Registry of Deeds, said parcel further shown as Parcel 7 (See attache
   (b) Type of zoning district in which the property is located Beach Point limited business
   (c) Is the applicant the owner of record? yes If not, who is?

3. Is this new construction? no
   OR
   Conversion or alteration of existing structure? Conversion to condominium form of ownership pursuant to Section VIII(C) of Town of Truro Zoning By-Laws.

4. If new construction:
   (a) What will be the total square footage occupied by the building? N/A sq. ft.
   (b) Does the present property and/or use conform with existing by-laws, or is it nonconforming? N/A

5. If conversion or alteration of existing structure:
   (a) What is the size of the lot? 16,600 ± sq. ft.
   (b) How many square feet will be added to the structure as a result of the conversion or alteration: none sq. ft.
   (c) Are the exterior materials, color and style of architecture of the conversion or altered portion of the building the same as existing structure? N/A

6. Is the duplex or conversion essential to provide needed housing? yes Why? Owing to the great demand for seasonal housing in the Town of Truro.

7. Will one of the apartments be occupied by the owner? yes, or by manager

8. How is the other apartment to be used? seasonal human habitation
   Seasonally or Year Round? use for human habitation limited to April 1 to November 30.

9. Will the structure and use comply with all other building, health, and zoning codes and ordinances? yes

RECEIVED
SEP 23 1985
TRURO BD OF APPEALS

on Sheet 7 of Truro Assessor's Map and is located off of Route 6A, Truro, Massachusetts. A copy of said plan is attached hereto and marked Exhibit A.

SEP 23 1985

10. Any additional information or data you wish to provide the Board to assist it making its decision? none

Applicant expressly understands and agrees that the Special Use Permit may be revoked if the terms and conditions under which it was issued are found not to exist or are not complied with by the Applicant.

Applicant states that to the best of his knowledge information provided herein is accurate and true.

/s/

Applicant Edward Brigman, Elaine Brigman-Tortora, Frank M. Tortora, by Their Attorney, Joseph P. Gargolinski

INSTRUCTIONS TO APPLICANT

1. a) Submit completed application to Board of Appeals Town Hall, Truro, Massachusetts. Enclose check for $50. ~~$25~~.00 application fee to cover the cost of publication and mailing of notice to interested parties as defined and required by Massachusetts General Laws.

   b) Also, file copy with Town Clerk.

   c) If any construction is contemplated, either new or alteration to existing structure, submit two (2) copies of blueprints and/or drawings.

2. You will receive by mail within 65 days after receipt of the application by the Board written notice of the date and time of the public hearing at which your application will be considered.

3. The Board has 90 days after the date of hearing to give its decision, (which you will also receive in writing), and that decision may be appealed within 20 days after it is filed with the Town Clerk. Notice of any appeal to the Court must be filed with the Town Clerk within those same 20 days.

4. After the 20 day appeal period has elapsed and if no notice of appeal has been filed, the Town Clerk will so certify on a copy of the decision.

5. Upon receipt of a certified decision approving a special use permit, THE APPLICANT IS REQUIRED to record the decision at the Barnstable County Registry of Deeds in the grantor index under the name of the owner of record.

If the land is registered, the decision must be recorded and noted on the owner's certificate of title.

6. The Building Inspector may issue a building permit upon receiving from the applicant a copy of the decision stamped by the Registry of Deeds showing that it has been recorded.

BOARD OF APPEALS
Truro, Mass.

This Petition when completed, in quadruplicate, and signed must be filed with the Board of Appeals, Truro, Massachusetts.

(Date) September 19, 1985

The undersigned owner(s) hereby make application to the Board of Appeals of the Town of Truro:*

** a) To review
   1. Decision of the Board of Selectmen
   2. Refusal of the Inspector to grant a permit

** b) For a variance from the requirements of the Truro
   1. Zoning Code By-Laws
   2. Building Cod By-Laws
   3. Sign Code

** c) For authorization of use under
   1. Section V-A of the Zoning By-Law
   2. Section VII of the Zoning By-Law
   3. Section IX of the Sign Code
   4. Section VIII(C) of the Zoning By-Laws of the Town of Truro

For the following purposes:

Pursuant to Section VIII(C) of the Zoning By-Laws of the Town of Truro, for the granting of a special permit to allow the establishment on the premises of a seasonal recreational residential condominium, to be known as Ebbtide-on-The-Bay.

Names and addresses of the abutting owners:

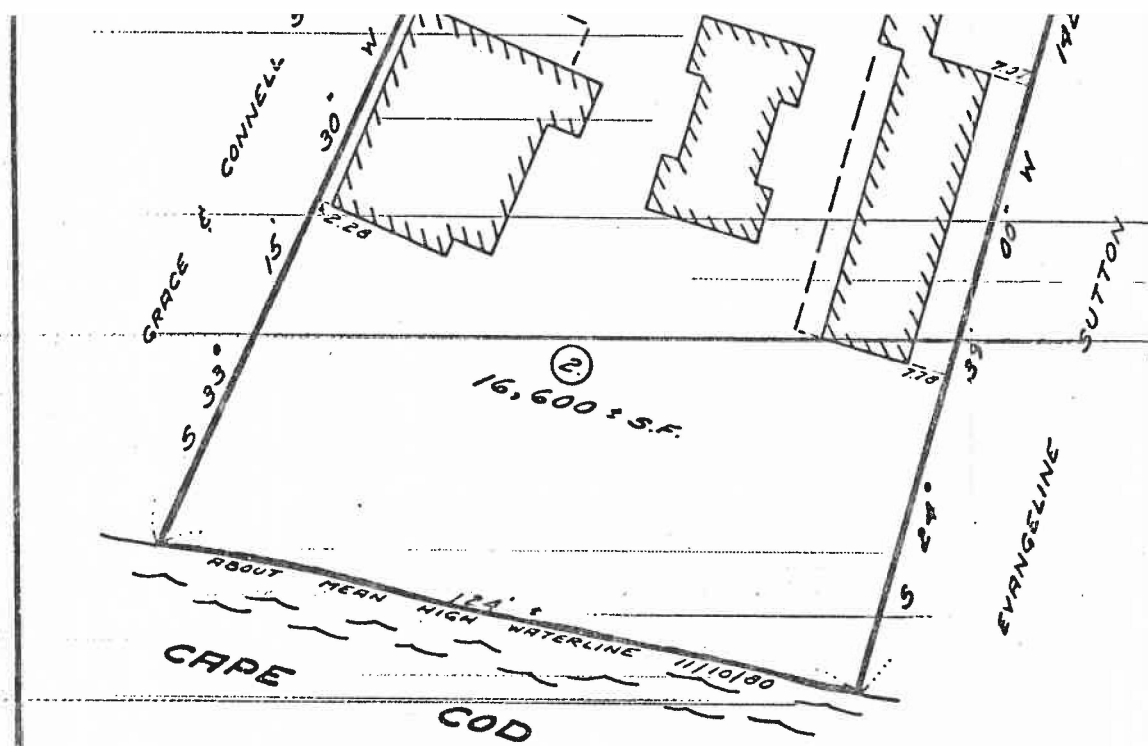
If more space is required list on an attached sheet.

Respectfully submitted, Edward Brigman, Elaine Tortora-Brigman, Frank M. Tortora, By their Attorney

Joseph P. Gargolinski

* The Rules and Regulations of this Board are on file with the Town Clerk

** Underline that which is applicable



APPROVAL NOT REQUIRED UNDER SUBDIVISION CONTROL LAW

TRURO PLANNING BOARD

DATE: 12-11-1980

FOR REGISTRY USE

JAN 12 12 24 PM '81

0 1 2 3

3" SCALE

"I CERTIFY THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS, WAS MADE WITH LAND COURT STANDARDS OF ACCURACY AND THAT THE PERMANENT POINTS SHOWN, DO EXIST."

NOV. 28, 1980 David C. Lanich

0 10 20 30 40 60

PLAN OF LAND
LOCATED IN
TRURO - MASS.
PREPARED FOR
RUTH LEDREW & KATHRYN BAKER

NOV. 28, 1980	SCALE: 1" = 20'
PLAN NO. 11280	FILE NO. 107TR
DRAWN BY: J.S.	N.B. - 130

CAPE & ISLANDS SURVEYING, INC.
P.O. BOX 334
TEATICKET, MASS.

WILLIAM N. ROGERS II, P.E., P.L.S.
PROFESSIONAL
CIVIL ENGINEERS & LAND SURVEYORS

41 OFF CEMETERY ROAD
P.O. BOX 631
PROVINCETOWN, MASSACHUSETTS 02657
TEL: (508) 487-1565
FAX: (508) 487-5809
EMAIL: WMROGERS2@VERIZON.NET

RUTH E. ROGERS
GARY L. LOCKE

STRUCTURAL CONSULTANT
DR. FRANK A. MARAFIOTI, P.E.

TRANSMITTAL

DATE 02-09-23

TO BARBARA CARBONI

ATTN PLANNING BOARD

FROM GARY LOCKE @ BILLY'S

PROJECT No T-20-0773

PROJECT EBBTIDE ON THE BAY CONDOMINIUM

COPIES TO

WE ARE SENDING YOU VIA

☐ FAX ☐ US MAIL ☐ FED EX ☐ COURIER ☑ BY HAND ☐ OTHER____

☐ HEREWITH
☐ UNDER SEPARATE COVER
☑ AS REQUESTED

☑ PRINTS
☐ TRACINGS
☑ SPECIFICATIONS

☐ SUBMITTALS
☐ SHOP DRAWINGS
☐ OTHER:

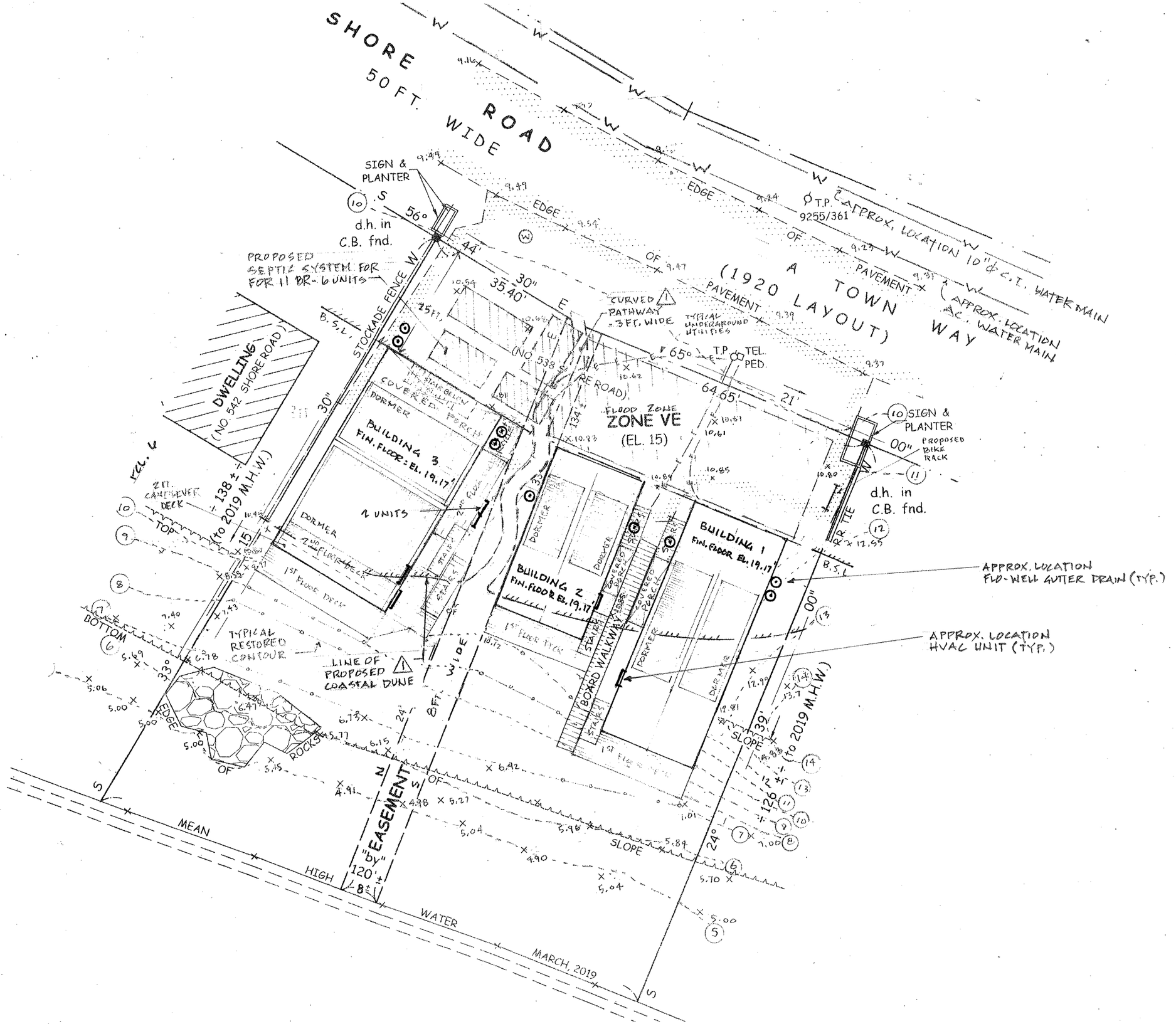
FOR YOUR
☑ USE / DISTRIBUTION
☐ REVIEW
☐ RECORDS
☐ SIGNATURE

IF ITEMS LISTED BELOW ARE NOT RECEIVED, NOTIFY US AT ONCE.

COPIES	TITLE	DATED
1	ADDENDUM TO SITE PLAN SP.1 DEPICTING HVAC UNIT & FLO-WELL APPROX. LOCATIONS	02-09-23
1	ORIGINAL CONDOMINIUM SITE PLAN	—
1	FLOWELL CUT SHEET	—

REMARKS

ANY QUESTIONS - GARY LOCKE 1-508-487-1565



NORTH

EBBTIDE ON THE BAY
CONDOMINIUM
NO. 538 SHORE ROAD
NORTH TRURO, MA.

ADDENDUM 1

LOCUS: ASSESSOR'S MAP 7, PARCEL 1

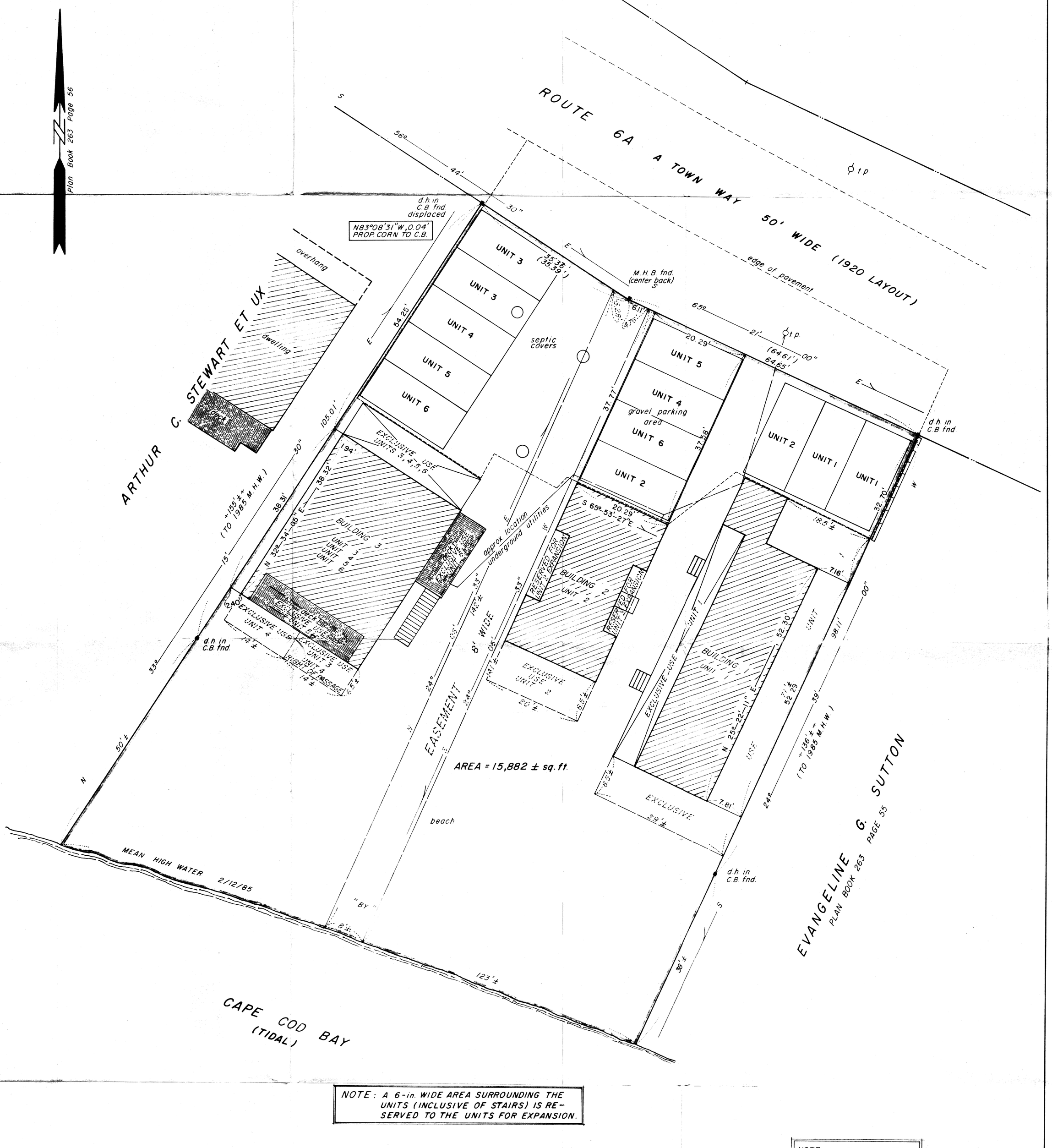
William N. Rogers II.
Civil Engineers & Land Surveyors
Building and Structural Design
Planning
41 Off Cemetery Road
Provincetown, MA 02657
(508) 487-1565 / (508) 487-5809 fax
Email : wmrogers2@verizon.net

ADDENDUM TO SITE PLAN SP. 1 DEPICTING HVAC UNIT & FLO-WELL APPROXIMATE LOCATIONS

0 10 20

SCALE: 1" = 20'-0"
DATE: 02-09-23
DRAWN: AL
JOB NO.: T-20-0773
REVISION:

AD-1



NOTE: A 6-in. WIDE AREA SURROUNDING THE UNITS (INCLUSIVE OF STAIRS) IS RESERVED TO THE UNITS FOR EXPANSION.

NOTE: ALL BUILDING OFFSETS ARE MEASURED PERPENDICULAR TO THE PROPERTY LINES.

REFERENCE: PLAN BOOK 263 PAGE 56
PLAN BOOK 348 PAGE 97
DEED BOOK 4386 PAGE 27

NOTE ( ) DENOTES RECORD INFORMATION

SCALE OF FEET
0 5 10 20

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

October 31, 1986 William N. Rogers II, PE, RLS

I CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS 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 THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

October 31, 1986 William N. Rogers II, PE, RLS

I CERTIFY THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LOCATION AND DIMENSIONS OF THE BUILDINGS AS BUILT AND FULLY LISTS THE UNITS CONTAINED THEREIN.

October 31, 1986 William N. Rogers II, PE, RLS

COMMONWEALTH OF MASSACHUSETTS
WILLIAM N. ROGERS II
No. 28410
REGISTERED LAND SURVEYOR

William N. Rogers II, RLS
October 31, 1986

PLAN OF LAND
IN
(NORTH) TRURO
as surveyed for
EDWARD BRIGMAN ET AL
depicting the
EBB TIDE ON THE BAY CONDOMINIUM

SCALE: 1 IN. = 10 FT. OCTOBER, 1986

WILLIAM N. ROGERS
REGISTERED
CIVIL ENGINEERS & LAND SURVEYORS
OFF CEMETERY ROAD, PROVINCETOWN, MASS.

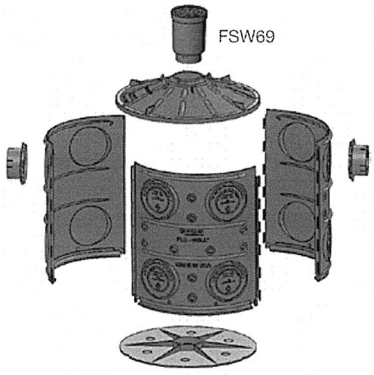
T-86-0773 A

FLO-WELL®: A BETTER DRY WELL

With the Flo-Well®, water can now be infiltrated into the subsoil rapidly and easily. Unlike competitive systems, there is no need for piping systems to transport stormwater to a far-off discharge point, large heavy equipment, considerable excavation of current landscaped areas, nor large labor costs that those systems incur. With Flo-Well, water infiltration is now easier than ever.

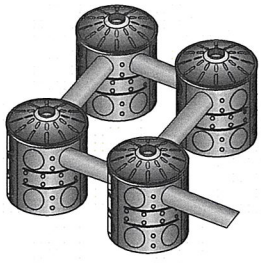
Options

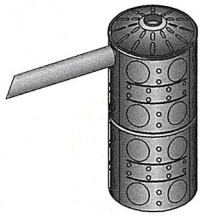
Larger 9" or 12" grates can be added to Flo-Well to manage surface water.	Ideal as a stand-alone drain:	Ideal as a stand-alone reservoir:
This option is ideal for draining:	Disturbs only 4 square feet of turf to install	Collect and hold rainwater for lawn and garden irrigation (used with a pump connected to a garden hose)
Golf course areas prone to puddling	Requires less than 10 cubic feet of soil removed to bury	Connect Flo-Well to rain gutters using a catch basin & grate below each downspout (see drawing)
Playground areas under slides and swings	Measures only 24" in diameter by 28.75" high	Ideal solution for arid areas impacted by drought
Outdoor drinking fountain runoff	Weighs only 22 pounds	Reservoir for pond and waterfall recirculation pumps
Outdoor showers at beaches	Holds over 48 gallons. Or, connect to existing system for increased drainage capabilities	
Wash-down areas		



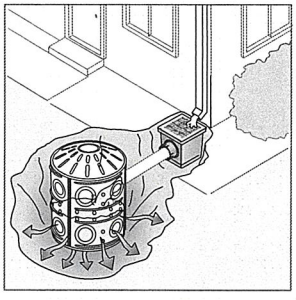
Stackable & Expandable

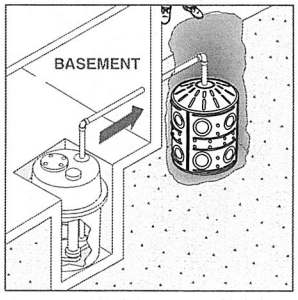
Flo-Well® can be used individually, connected in series or in any array, and can be stacked up to 4 units high (with center support pipe).


Connected

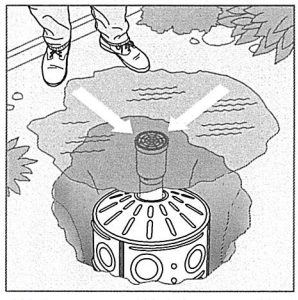

Stacked

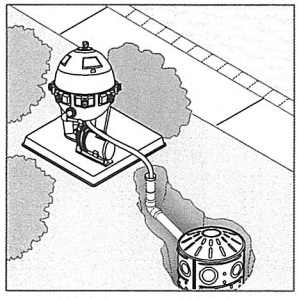
Applications


For gutters and downspouts



Install with sump pumps


Eliminates puddles


Backwash tank

Elizabeth Sturdy

From: Richard Roberts
Sent: Tuesday, February 21, 2023 11:10 AM
To: Elizabeth Sturdy; Barbara Carboni
Cc: Anne Greenbaum
Subject: FW: Street Definition article - Draft - Version 14
Attachments: Street Def 2023 Article V14 Warrant format 2-21-2023.docx

Liz, Barbara,

Please distribute the attached version of the Street Definition article to Planning Board members, for review and discussion at our meeting tomorrow evening.

FYI: The changes proposed in this version are shown highlighted in yellow. For the most part, these changes involve a modified definition of terms. Most notably and most importantly: The previous version (V13) included two contradictory definitions of the term "Roadway". This has been addressed by deleting the "Roadway" definition previously shown in 10.4 Definitions and instead defining "Travelway" in 10.4.

The definition of "Roadway" in 30.11.A.2 has been retained, per previous versions of this article.

This change in definitions resulted from review of comments received from TPTRA.

Rich

Article XX: Amend Zoning Bylaw §10.4 Definitions – Street Definition and add new Bylaw §30.11 regulating Streets and Frontage

To see if the Town will vote to modify the Zoning Bylaw by amending Section 10.4 Definitions and adding new Section 30.11 Streets and Frontage by deleting the language in ~~strike-through~~, adding the **bold underlined** wording and enumerate the street definition and frontage bylaws accordingly.

§10.4 Definitions

~~*Street: A public or private way which affords access to abutting property. For the purposes of this bylaw, the terms "street", "road", "way" and "right of way" bear the same meaning. When a street(s) is to be used for lot frontage, the street(s) shall conform to the requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards, (b), (c) and (d) as they existed on January 1, 1989. Street(s) shall have a centerline length in excess of 100 feet. For dead-end street(s), this distance shall be measured from the sideline of the layout of the road to be intersected to the opposite end of the layout of the turnaround cul-de-sac. Town of Truro paved streets that: (1) have a minimum layout width of 20 feet, (2) were created prior to January 1, 1989 and (3) were accepted by Truro Town Meeting, are exempt from the width requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards. These accepted public paved ways shall be deemed adequate as frontage for the issuance of building permits. The list of accepted public paved ways is available from the Town of Truro Town Clerk upon request.*~~

Street: A private or public way by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations. For the purposes of this bylaw, the terms "street" and "road" bear the same meaning.

Travelway: the portion of a road layout designed for vehicular travel; the traveled portion of the way. For the purposes of this bylaw, the terms "Travelway" and "Traveled Way" bear the same meaning.

Section 30.11 Streets and Frontage

A. ***Purpose:***

1. ***It is the intent of this section to provide the minimum requirements for existing roadways to qualify as "Streets" in order to serve as frontage for the purposes of obtaining a building permit. A list of roadways qualified as "Streets" is to be maintained by the Town Clerk.***

2. ***As used in this bylaw Section 30.11 the term "roadway" refers to an existing way not yet classified as a "Street", including the travelway and associated right-of-way on either side of the travelway.***

3. ***All roadways submitted to the Town for qualification as "Streets" must satisfy the requirements and application process enumerated in paragraphs C through F below, except as otherwise noted.***

B. ***Ways Previously Qualified as "Streets":***

Ways meeting any one of the following three criteria shall have "grandfathered" Street status:

1. ***All Town of Truro paved public ways with a 20' minimum Right of Way width, created prior to January 1989, that have been accepted by the Truro Town Meeting and that the Town Clerk certifies are maintained and used as a public way.***
2. ***All State roads, designated and maintained by the Commonwealth of Massachusetts.***
3. ***A way that has been approved by the Planning Board, constructed in accordance with its subdivision plan and its associated covenants at the time of its approval and recorded at the Barnstable County Registry of Deeds.***

C. ***Prerequisite Qualifications: these criteria are required of all roadways applying for status as "Streets":***

1. ***The roadway shall have a smooth graded or paved surface free of ruts, potholes or other impediments to vehicular travel to the extent that a passenger car can negotiate the road safely at a continuous speed of at least 10 mph.***
2. ***Public Safety Clearances: In order to provide safe passage for safety and emergency vehicles roadways submitted for approval as "Streets" must satisfy the following minimum clearance requirements (See Truro General Bylaws, Chapter 1, Section 1-9-13.):***
    a. ***The traveled way of any street shall be no less than eight (8) feet wide.***
    b. ***The combined traveled way and clearance of any obstacles including vegetation shall be no less than fourteen (14) feet.***
    c. ***Height clearance shall be no less than fourteen (14) feet from the road surface.***
3. ***Right-of-way location and width:***
    a. ***Roadways that have their right-of-ways defined as a single line crossing (dividing) one lot are not eligible for classification as "Streets".***
    b. ***Utility Panels: The minimum right-of-way width shall be the width of the clear travelway (for paved roads, this dimension to be taken as outside of curb to outside of curb), plus a five (5) foot wide utility panel outboard of the travelway on each side of the travelway. Where site conditions preclude a utility panel on one side of the road, the application may include a request to the Planning Board for acceptance of a utility panel on only one side of the travelway.***

4. ***Roadways Ineligible for Steet status:***

    a. ***Roadways (or portions thereof) wholly or partially within FEMA flood zones AE, A0, A1-30, V, VE, or V1-30.***

    b. ***Roadways (or portions thereof) designated as "Low Lying Roads" by the Cape Cod Commission.***

D. ***Pre-Submission Review:***

1. ***Pre-Submission Review: Prior to submitting a completed application for Street status applicants may find it useful to review the proposed Street with the Planning Board to review general details and potential problems informally. Pencil sketches and other photos or illustrations, which need not be professionally prepared, will assist the informal discussion. A pre-submission review is strictly a voluntary procedure left to the discretion of the applicant and has no legal status.***

E. ***Application Requirements:***

1. ***A completed Street Certification Application form.***

    a. ***The application shall clearly stipulate whether the determination is for the entire length of the roadway or the roadway up to and including a specific lot located on said roadway. The specific lot shall be identified by both location address and Town Assessor's office tax map/parcel number(s).***

    b. ***Applications shall include the identification of the street the roadway connects to. Roadways seeking "Street" status must be connected to previously approved street(s), that is, newly approved "Streets" cannot be isolated from other Streets and accessible only by ways that do not have Street status.***

    c. ***The application shall include a survey plan of the roadway and a centerline profile of the travelway, beginning from the connection point to the existing street(s). The plan shall have fully defined right-of-way boundaries capable of being fully established and identified in the field by survey. Field survey of the right-of-way shall be conducted at the applicant's expense and a survey plan stamped by a licensed Land Surveyor shall be submitted as part of the application.***

    d. ***The field survey requirement in paragraph E.1.c above may be waived if: a) the roadway is already part of a subdivision plan previously approved by the Planning Board that meets all the requirements of Section 30.11, b) is stamped by a Registered Land Surveyor and c) is recorded at the Barnstable County Registry of Deeds.***

e. ***The application shall contain a roadway maintenance plan. The maintenance plan shall describe the nature and frequency of maintenance, the lot owner(s) financially responsible for this maintenance and how this cost will be shared. The plan shall bear the signatures of said lot owners. (This plan shall be included within the recorded plan and a signed copy of the maintenance plan shall be recorded as part of the covenant.)***

f. ***Future Development Considerations:***

The following information shall be required as part of all Street applications and shall be sufficient, in the judgement of the Planning Board, to allow the Board to assess the potential for future development that could potentially impact future traffic volume on the applied-for Street section.

1. ***Inventory: The application shall include a list all lots with frontage on the proposed street including: current owner, address, acreage, frontage length and tax map parcel number.***

2. ***Applications for Street status involving only a partial length of a roadway shall include an inventory (per paragraph E.1.f.1 above) of all lots that can only be accessed via the roadway in question, including all lots located beyond the limits of the Street application.***

g. ***Newly approved "Street" status of a roadway does not relieve the existing lot(s) from any further requirements of either Massachusetts General Law or the Truro Zoning Bylaw (as amended).***

F. ***Approval Process:***

Upon receipt of an application to grant Street status to an existing roadway the Planning Board shall make a determination of the adequacy of a street using the procedure outlined below:

1. ***Upon the filing of a completed application and prior to the public hearing said application shall be transmitted to the Fire Department, Police Department, Department of Public Works and the Building Commissioner. The Planning Board may optionally solicit additional comment from other Town Boards and Departments as it deems appropriate. Each of these departments shall conduct an on-site review of existing roadway conditions and shall have a period of 14 days from the date of the request to submit a written report of their findings, including any public safety concerns, to the Planning Board.***

2. ***Prior to the opening of the public hearing, the Planning Board members shall make an on-site visit of the roadway under consideration for "Street" status.***

3. ***Prior to the opening of the public hearing, the applicant shall show proof to the Planning Board that all parties who have a share of the ownership of the land beneath the roadway or frontage upon said roadway under consideration have been notified by certified mail.***

4. ***Public Hearing – The Planning Board shall hold a duly noticed public hearing within forty-five (45) days of receipt of a completed application requesting the upgrade of a roadway to "Street" status. Notice shall be made no less than fourteen (14) days prior to the scheduled public hearing via regular first class mail to all the owners of properties abutting said roadway.***

5. ***Requirements – The applicant shall show to the satisfaction of the Planning Board that the travelway has sufficient width, suitable grades, geometry and construction and is in serviceable condition to provide access for emergency vehicles as well as safe travel and adequate circulation in order to be classified as a "Street".***

6. ***Review Criteria: The Planning Board shall first review the application for completeness and the comments of the Town officials. In its evaluation of the roadway, the Planning Board may optionally refer to and may utilize existing road standards as outlined in the Town of Truro Rules and Regulations Governing the Subdivision of Land (as amended) and the Town of Truro General Bylaws (as amended) as guidelines. This review may include the need for guardrails, turn-outs, pavement on steep road sections, a material upgrade of the road surface in questionable terrain, provisions for drainage, etc. as necessary to insure the safety of the residents of the abutting lots of the newly approved "Street". Such required improvements should precede "Street" status final approval or be secured by an appropriate performance guarantee per sections 2.5.4. through 2.5.7. of the Town of Truro Rules and Regulations Governing the Subdivision of Land (as amended).***

G. ***Decision:***

1. ***By a majority vote of the Planning Board, the petition for roadway "Street" status may be approved. The approval decision shall contain the required plan(s) and the associated covenants including the required maintenance agreement and any other stipulations the Board deems necessary.***

2. ***The Planning Board's Decision with findings on the determination of the adequacy of the roadway shall be filed with the Town Clerk within 30 days after the close of the hearing.***

3. ***Any denial of "Street" status shall be accompanied by findings of fact supporting the Planning Board's decision.***

4. ***Appeal:***

    a. ***Any appeal from the decision must be filed with the Truro Zoning Board of Appeals within thirty (30) days from the date of filing with the Truro Town Clerk.***

    b. ***Any further appeal shall be conducted per the provisions of Massachusetts General Laws Chapter 40A, Section 17.***

H. Recording:

1. ***It shall be the responsibility of the applicant to obtain a true attested copy of the decision from the Town Clerk after the thirty (30) day appeal period has lapsed or after all further appeals have been denied or dismissed. The applicant shall be responsible for recording the "Street" status decision at the Barnstable Registry of Deeds or Land Court, as applicable. Prior to the issuance of a building permit, the applicant shall present evidence of such recording to the Building Commissioner, the Truro Town Clerk, and the Truro Planning Board. The Town Clerk shall keep and maintain a list of all ways qualified as "Streets".***

(End of Article)

Elizabeth Sturdy

From:	TPRTA Truro <tprta@tprta.org>
Sent:	Thursday, February 16, 2023 3:35 PM
To:	Elizabeth Sturdy
Cc:	Anne Greenbaum; Richard Roberts; Caitlin Townsend; Jack Riemer; Paul Kiernan; Ellery Althaus; Virginia Frazier; Barbara Carboni
Subject:	Street Definition article / TPRTA comments
Attachments:	TPRTA _Comments_StreetDef_021623_sig.pdf; Williams v. Board of Appeals of Norwell_ 490 Mass. 684.pdf

Dear Liz -

We would like the following documents containing and supporting TPRTA's comments on the proposed Street Definition article under consideration by the Planning Board to be included in the next packet of the PB where the article is to be discussed, either in work session or open session or both.

We have been involved in and advocating for a revision of a street definition since at least 2014 because the current version adversely impacts so many property owners and taxpayers in Truro. We really appreciate the Planning Board's persistence and believe this newest effort is the best so far to address the underlying issues affecting unimproved, non-conforming ways. We offer these suggestions in hope that this will make this definition more effective for more property owners and more likely to be adopted by voters.

We waited until the Board had issued a version ("V9") in the format proposed for an actual article to make these final and comprehensive comments. This way, we could follow your actual format and structure, hoping this will be easiest to follow. We have sought the views of our Board, members, and advisors to develop these comments and suggested revisions.

Thanks for considering these comments. We are of course, willing to answer any questions that Boar Members may have.

Anthony Garrett, President

TRURO
PART-TIME
RESIDENT
TAXPAYERS'
ASSOCIATION

P.O. Box 324 · Truro, MA, 02666
tprta@tprta.org · www.tprta.org

February 16, 2023 **By Email**

Truro Planning Board
Truro Town Hall
Truro, MA 02666

Re: Proposed New Street Definition - Comments to Version 9 ("V9")

Dear Colleagues:

We greatly appreciate the effort you have made to develop a proposed new street definition that will allow more of the existing unimproved ways in Truro to be conforming. We have reviewed the versions you have developed and listened and/or attended the Planning Board ("PB") meetings and work sessions to understand the issues you have grappled with and your proposed ways to deal with them. We have sought the views of our members and have obtained expert commentary on your latest version - V9 - as a basis for our comments below. We hope these are constructive.

As some of you may know, TPRTA has called for a new street definition since 2014 and has actively engaged in every effort that preceded this one also. This is specifically because we have long held that the existing definition impedes the right of property owners to use their land and burdens the Town with difficult procedures as a result of the massive non-conformity of most of Truro's streets and ways created by an unrealistic and non-responsive street definition.

We are especially pleased to see that, going forward, you intend to use the safety requirements in the Truro General Bylaw 1-9-13 [on Safety] as a defining standard. We think this iteration holds the most promise both for voter approval and for improving lot conformity for parcels with frontage on currently non-conforming ways.

At the same time, we believe V9 will benefit from additional, substantive revision to achieve a form that will stand up to legal challenge and that will garner voter support. To this end, we offer below a summary of the comments raised by TPRTA members. We also attach an appendix that comments on and or makes suggested edits to the sections (based

on V9) that, in our view, will ensure fair and equitable treatment of property owners and heighten chances of voter adoption.

Our most serious concerns are these:

1. **Who benefits from this new definition - and who does not**. The document draws a dividing line that allows unimproved ways depicted in recorded subdivision plans to be accorded conformity. This is a great step. At the same time, this dividing line is arbitrary and leaves nearly one-third of the currently non-conforming roads in a disadvantageous position. A simpler and more efficient approach is to reframe the street definition in a more inclusive way, that is, to declare every way that is found in a recorded deed, plan, survey, or established in an official Town Decision or Court decision to be considered a "way" and then require those that do not meet the conditions proposed here (based on GB 1-9-13) to seek approval for frontage and access safety conditions. The approach that calls for "Approval of a Street" is overly complex, misses the central point (safe and adequate access and sufficient frontage), deprives or impeded the exercise of rights to improve guaranteed by law, imposes considerable barriers and costs to the process, and puts the Town at considerable risk of legal challenge on a number of fronts. We encourage simplicity - that is, accept all ways existing on the ground or in recorded instrument and established per above, <u>as ways</u>, and then make sure they are adequate from a safety perspective.
2. **This definition fails to acknowledge or accord M.G.L. c. 40A, §6 grandfathered status.** This is perhaps one of its most troubling aspects and should be incorporated as a fundament revision to this document. Grandfather rights are sacrosanct in Massachusetts Law (see the Sept 2022 *Williams* Decision of the SJC, attached) for confirmation and clarification. Equally important, the PB's new assertion that a grandfathered lot must have an existing way in use and constructed is without basis in law.
3. **It appears to deprive property owners of petitionary rights, such as an ANR request.** Rights guaranteed by state law cannot be taken away by Town articles. To attempt to do so sets the Town – and property owners - up for grief.
4. **Requirements for road maintenance guarantees and abutter's prior agreement are essentially contracts and may exceed the PB or the Town's authority to require.** On top of that, as fashioned, they are impractical, burdensome, and likely impossible to achieve or enforce. We recommend asking for what a property owner can really do with respect to the subject property and give abutters the means to comment and appeal if they believe they are aggrieved.
5. **The process outlined effectively requires that a road be constructed - without certainty that it will be approved by the PB in this new process.** This is a circular and expensive Catch-22 for property owners. Further, the law permits property owners to show that construction is possible, not accomplished. Accordingly, the PB can approve a proposed road improvement plan of a qualified engineer as part of the process and condition its final approval on proof of completion as per said road

improvement plan.

Our other concerns are equally important but more granular and are reflected in recommendations from our members contained in the attached Appendix.

As always, thank you for your hard work and thought. Despite these concerns, we believe this article, if amended, will be a great step forward for Truro. Thank you for your consideration.

Sincerely,

Anthony Garrett, President

CC: Barbara Carboni
Encl.

Appendix
TPRTA Comments on Proposed Street Definition Article 2023
(based on PB "V9")

Comments Section by Section
(Recommended changes in RED)

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1. **"Application for Street Approval"** - We believe the process is labelled and described in a way that is inherently confusing. Only the Select Board may approve a street - that is, create, close, or determine that a street exists. Only voters may elect to abandon a street. Thus, this way of describing the application is at best confusing and may be misleading as to the PB's authority. And it conflates the existence of a way with meeting conditions for frontage and access. We suggest that a more accurate and useful way of describing this is **"Application for Approval of Street Conditions"** - for that is what an applicant is actually doing and what the PB has authority to establish for the purposes of frontage and access.
2. **The re-definition of ways** - In V9 what constitutes a "street" is dramatically changed and restricted. More to the point, it flies in the face of state law and court findings. It starts with §10.4 where it does not include reference to both frontage and access (the purpose of this effort) and omits "ways" in the definition though it is a common term used in deeds, mortgages, surveys, and other documents of record, including extensive Court decisions. Yet, the article as drafted uses "way" many times even though not defined. We specifically refer you to the recent SJC decision, which among other things broadly defines "street" to include "ways." Truro's street definition should be consistent with Court rulings, at a minimum.
    a. **In §10.4 Definitions**, we sugest these wording changes below:
    Street: A private or public way, improved or unimproved, which has sufficient frontage and by which vehicles and pedestrians can safely gain access to and egress from homes, places of business and other locations. For the purposes of this bylaw, the terms "street," "road" and "way" bear the same meaning.
    Roadway: The portion of a road layout designed for vehicular travel; the traveled portion of the way not yet satisfying the frontage and access requirements of a Street.

    b. In §30.11. A. 1, V9 uses the term "roadways" to mean the "road" - that is, in a different way then intended by §10.4. For §30.11. A. 1, we suggest these wording changes:

    (1) It is the intent of this section to provide the minimum requirements for existing ways to meet the criteria to serve as frontage and access for the purposes of obtaining a building permit. A list of ways that presently conform as "Streets" is to be maintained by the Town Clerk.
    (2) The term as used in Section 30.11 refers to an existing way not yet satisfying the frontage and access requirements of a "Street".

(3) An existing way is any street, road or way cited or depicted in a recorded instrument (deed, plan, mortgage, trust, survey or other recorded instrument) or Court decision, regardless of condition.

(4) All existing ways submitted to the Town for qualification as meeting the frontage and access standards of a "street" herein must satisfy the requirements and application process enumerated in paragraphs C through F below, except as otherwise noted, after which approval can be issued.

b. **In §30.11, B (1-3)** the requirements may create confusion because it is not clear whether the conditions are all required or whether any single one is sufficient. Further, the requirement for "construction" as a pre-condition for a way to exist is not supported by law, is also detrimental to the interests of property owners, and presents a Catch-22: which comes first in this "application" process - the constructed street or the right to construct the street to meet new criteria? The law and caselaw precedent suggest the right comes first.

We suggest these wording changes below for **30.11. B.3 C:**

A way that has been approved by the Planning Board, or constructed in accordance with a subdivision plan, or its associated covenants at the time of approval, or is recorded at the Barnstable County Registry of Deeds, and/or is ordered by Court of legal jurisdiction.

3. **Prerequisite Conditions.** Consistent with remarks above we suggest **this wording for titular section heading** for Section C:

C. Prerequisite Qualifications: these criteria are required of all ways applying for approval of conditions to meet frontage and access requirement(s) for "Streets":

For subsequent items within C, we suggest some revised wording, largely because unimproved ways - the bulk of those seeking approval of frontage and access conditions, can never be smooth, graded or paved surface "free of ruts, potholes…..". Unimproved ways are subject to continual pressures from weather and vehicular usage. It is unrealistic for a travelled way to be completely free of any ruts or potholes on any given day or even a period of time. And who will enforce this, and when? It is equally unrealistic to make a single applicant responsible for the grading of an entire way. Many unimproved roads have set a max speed of 10 mph, suggesting that such a speed is too high to determine safe passage "at a continuous speed of 10 mph." Finally, the purpose of these regulations is in great measure to ensure safe passage for emergency vehicles, consistent with Section F.5. For these reasons,

We suggest these wording changes below for specific items in section C:

1) The roadway shall be in serviceable condition sufficient to provide safe and adequate access for emergency vehicles and to a passenger car traveling at a continuous speed of at least 5 mph;

2) Public Safety Clearances: In order to provide safe passage for safety and emergency vehicles, a way submitted for approval of conditions to meet frontage and access requirement for "Streets" must satisfy the following minimum clearance requirements (See Truro General Bylaws, Chapter 1, Section 1-9-13.):.....
[Rest unchanged in this section]

Separately, we suggest that **Item 3,** the **Utility Panel requirement be deleted in its entirety**, for these reasons.

3) The Utility Panel requirement overburdens the property owner in that such panels are typically within the Utility's separate, pre-arranged utility easement, recorded at the registry or established through street practice. Additionally, as described here, this requires a wider roadway than is defined in this article, making the "14 foot box" actually 24' x 14' (or at least 19 x 14 ft). Further, who determines if the Utility Panel represents a Utility encroachment?

4. **Pre- Submission Review:** This section, in our opinion, does not allow for two essential aspects of the application process. First, applicants have a right to improve their roads AFTER an application has been submitted to determine frontage and access sufficiency, especially with regard to safe and adequate access. In this regard this "pre-submission" should anticipate this exercise and encourage it. Second, while the addition of this section is helpful, the final phrase is unhelpful where it states: " A pre-submission review is strictly a voluntary procedure left to the discretion of the applicant and has no legal status whatsoever." A property owner has a right to rely on the opinions and recommendations of the Planning Board requested specifically to inform an application process. Anything less is unreasonable.

5. **Application Requirements** can benefit from changes as well, in part based on previous comments as well as new observations. References in this section (and all sections) to "roadway" should be changed or aligned with one of the two definitions of roadway as in V9 or, alternately, by accepting the modification in definitions we have proposed above. We suggest wording changes below, in red

1) A completed Street Conditions Certification Application form.
c. Use of right-of-way here confounds the actual intent. Many Truro ways have ownership to the middle of the road; others have ownership to the sidelines as establish by lot boundaries. Still others have roads that are owned by associations, not property owners.

We suggest these wording changes below:

c. The application shall include a survey plan stamped by a licensed Land Surveyor of the entire length of the traveled way including the connection point to the existing street(s). The plan shall have fully defined boundaries

capable of being fully established and identified in the field by survey. Field survey of the portion of the traveled way identified in E.1.a shall be conducted at the applicant's expense. [delete rest]

d. Any property that is depicted in a recorded plan or survey, regardless of subdivision status, should be permitted to waive this requirement to re-survey.

We suggest these wording changes below:
d. The field survey requirement in E.1.d may be waived if the applicant can provide any recorded plan stamped by a registered land surveyor which depicts the applicant's lot in sufficient detail to demonstrate the lot meets or can meet the required conditions herein.

e. **The requirement for a road maintenance plan is deeply troubling in several respects:** it grossly overburdens the applicant, who may have neither the means or the authority to develop or acquire such a plan; it forces unrelated properties into a contract with the Town that the Planning Board has no right to require in this manner (perhaps in any manner). It creates a "leveraged" situation is which other property owners along the subject way can leverage their positions or indeed impede the development of the applicant lot for ulterior purposes (*e.g.*, to deflate lot value in order to more advantageously acquire an abutting property). This requirement can effectively landlock any property owner on a non-conforming way that is shared by other properties. This also flies in the face of State law, which allows for road improvement "especially if the road is impassable."

We recommend that this requirement for road maintenance be removed and instead a check box should be added on the application form where the applicant attests to maintain the way that serves as frontage for the applicant's property.

We further recommend that this document specifically note that remedy is available through an appeal process for abutters to the PB or the ZBA first, and, if necessary, through an M.G.L. c. 40A, §17 process in State Court.

f. This section deprives property owners of petitionary rights and merits re-consideration. The PB appears to exceed its authority where it aims to deprive property owners of rights guaranteed by state law, including the right to seek ANR status should any lot be of sufficient acreage, have adequate frontage and safe and adequate access. Further, this contravenes Town policy to promote lot development, especially those that may afford the opportunity for more ADUs.

We suggest wording changes below, in red:
f. Any roadway receiving approval that it has or will meet "Street Conditions" status through the Section 30.11 process shall not be eligible as access for any new subdivision, unless and until a resubmission of a revised Street Conditions

Certification Application is approved by the Planning Board. [deleted: The ANR prohibition is removed in its entirety]

g. This merits a **small text addition** in the opening:
"Newly approved 'Street Conditions' status of a way....."

6. **Approval Process** would need word changes to be consistent with recommendations above, for such words as "roadway" → way; "Street Approval"→ Street Conditions Approval; and the like. In addition, three terms are used here only and are not defined elsewhere: "travelway" → traveled way; "**geometry**" and "**adequate circulation**" are added here and are not consistent with the prior conditions established for safe and adequate access above, based on Truro General Bylaw 1-9-13. This General Bylaw does not mention or require "geometry" or "adequate circulation" either.

   We recommend deleting "geometry" and "adequate circulation" and amending "travelway" to "travelled way".

F. Approval Process
1) This paragraph should require the PB to inform the applicant in writing of the Town official's positions prior to any hearing that may be held; and give the applicant an opportunity to challenge or remedy a local official's "safety" determination prior to or as a result of the PB hearing process, especially where town officials may have differing conclusions or concerns.

This paragraph should limit the safety opinion to one Town official – either Fire/EMS or Police or DPW, not all three. Reasons for disapproving on the basis of safety condition should be provided in writing with specificity as to the conditions requiring remedy and standards needing to be met.

We recommend that these requirements be added to this paragraph to ensure open, fair and transparent review of the application.

G. Decision – Many of the provisions of this section merits wordsmithing per above for consistent use of terms and deletion of terms without definition.

Williams v. Board of Appeals of Norwell

Supreme Judicial Court of Massachusetts

May 2, 2022, Argued; September 16, 2022, Decided

SJC-13230.

Reporter
490 Mass. 684 *; 194 N.E.3d 168 **; 2022 Mass. LEXIS 434 ***

THOMAS F. **WILLIAMS**[1] *vs*. **BOARD OF APPEALS OF NORWELL** & others.[2]

Prior History: [*1]** Plymouth. CIVIL ACTION commenced in the Land Court Department on January 8, 2010.

The case was heard by *Jennifer S.D. Roberts*, J., on motions for summary judgment.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

***Williams v. Norwell** Bd. of Appeals, 2020 Mass. LCR LEXIS 20 (Feb. 4, 2020)*
Williams v. Bd. of Appeals of Norwell, 100 Mass. App. Ct. 1102, 2021 Mass. App. Unpub. LEXIS 528, 172 N.E.3d 431, 2021 WL 3028041 (July 19, 2021)

Core Terms

bylaw, frontage, zoning, recorded, deed, feet, Dictionary, planning board, building permit, endorsement, nonconforming, buildable, street, summary judgment motion, residence district, summary judgment, private way, public way, unbuildable

Case Summary

Overview

HOLDINGS: [1]-The zoning board of appeals erred by revoking issuance of a building permit based on a finding that the lot lacked the statutorily mandated fifty feet of frontage; [2]-The appellate court held that the lot was protected under *Mass. Gen. Laws Ann. ch. 40A, § 6*, because it had the necessary "frontage," as that term was understood locally, in 1957, when the lot was last conveyed prior to the 1959 zoning change that first rendered it unbuildable.

Outcome
Vacated, set aside, and remanded.

LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > Appeals > Standards of Review > De Novo Review

***HN1*[] Entitlement as Matter of Law, Appropriateness**

The allowance of a motion for summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. The appellate court reviews a decision on a motion for summary judgment

[1] Individually and as trustee of the River Realty Trust.

[2] William McCauley, Maura A. Lareau, Gregory T. Lareau, Richard Thornton, and Deborah Thornton.

de novo and, thus, accords no deference to the decision of the motion judge.

Governments > Legislation > Interpretation

HN2[] Legislation, Interpretation

The court's primary duty in interpreting a statute is to effectuate the intent of the legislature in enacting it. The court begins with the language of the statute itself and presumes, as it must, that the legislature intended what the words of the statute say. The court does not interpret the statutory language, however, so as to render it or any portion of it meaningless. The construction of a statute which leads to a determination that a piece of legislation is ineffective will not be adopted if the statutory language is fairly susceptible to a construction that would lead to a logical and sensible result.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Local Planning

Real Property Law > Subdivisions > State Regulations

Business & Corporate Compliance > ... > Real Property Law > Zoning > Zoning Methods

HN3[] Zoning, Local Planning

Mass. Gen. Laws Ann. ch. 40A, § 6, is concerned with protecting a once-valid lot from being rendered unbuildable for residential purposes, assuming the lot meets modest minimum area and frontage requirements. The statutory policy of keeping once-buildable lots buildable is grounded in principles of fairness to landowners. Consistent with this policy, the court has construed various provisions of Mass. Gen. Laws Ann. ch. 40A, § 6, broadly to protect landowners' expectations of being able to build on once-valid lots, and to avoid the hardship that would result from a lot losing its buildable status.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

HN4[] Zoning, Ordinances

The first sentence of Mass. Gen. Laws Ann. ch. 40A, § 6 grants a perpetual exemption from increased local zoning requirements to certain lots that were once buildable under local bylaws, provided that certain conditions are met.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Nonconforming Uses

Environmental Law > Land Use & Zoning > Nonconforming Uses

HN5[] Zoning, Nonconforming Uses

In a land use dispute, the court first must decide when the lot became nonconforming. The court has interpreted the time of recording or endorsement to mean the time of the most recent instrument of record prior to the effective date of the zoning change that rendered the lot nonconforming. The court then must identify the last deed conveying the lot that was recorded or endorsed before the amended bylaw went into effect that made the lot nonconforming.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

HN6[] Zoning, Ordinances

The applicable town bylaw is the bylaw that was in effect at the time of the relevant recording or endorsement.

Governments > Legislation > Interpretation

HN7[] Legislation, Interpretation

The court construes the meaning of a bylaw using ordinary principles of statutory construction, beginning with the plain language of the bylaw. When a statute does not define its words, the court gives them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose. The court derives the words' usual and accepted meanings from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions. To the extent that the meaning of a statute remains unclear, the court seeks to ascertain the intent of a statute from all its parts. The court looks

to the language of the entire statute, not just a single sentence, and attempts to interpret all of its terms harmoniously. Where the language is not conclusive, the court may turn to extrinsic sources, including the legislative history and other statutes, for assistance in its interpretation.

Governments > Legislation > Interpretation

HN8[] **Legislation, Interpretation**

Where the same statutory term is used more than once, the term should be given a consistent meaning throughout. The need for uniformity in interpreting statutory language becomes more imperative where a word is used more than once in the same section.

Governments > Legislation > Interpretation

HN9[] **Legislation, Interpretation**

The court has rejected constructions of words in a statute that would require it to attribute different meanings to the same words in the same paragraph, or impose two different meanings to a word within one section.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Ordinances

Governments > Legislation > Interpretation

HN10[] **Zoning, Ordinances**

The meaning of words in a local zoning bylaw must be arrived at by consideration of the legislative purpose.

Headnotes/Summary

Headnotes

MASSACHUSETTS OFFICIAL REPORTS HEADNOTES

Zoning > Frontage > By-law > *Way* > Private > *Statute* > Construction

A town's zoning board of appeals correctly affirmed the issuance of a building permit on an undeveloped lot that was protected as buildable under G. L. c. 40A, § 6, where, at the time when the lot was last conveyed prior to the zoning change that first rendered it unbuildable, the lot had the necessary frontage on a private way, given that, at that time, "frontage" was understood in the town to refer to frontage on a "way" without regard to whether the way was public or private and without regard to whether the town's planning board had approved a private way. [691-697]

Counsel: *Jeffrey Nguyen* for the plaintiff.

Jeffrey A. De Lisi for Maura A. Lareau & another.

Judges: Present: BUDD, C.J., LOWY, CYPHER, KAFKER, WENDLANDT, & GEORGES, JJ.

Opinion by: GEORGES

Opinion

[170]** GEORGES, J. In this case, we consider whether an undeveloped lot, which was deemed unbuildable under the local zoning bylaw in effect when the owner of the lot requested a building permit, is protected as buildable by the first sentence of G. L. c. 40A, § 6, fourth par. Resolution of this issue depends on whether the lot meets the minimum "frontage" requirement set forth in that provision. We conclude that the lot is protected under G. L. c. 40A, § 6, because it had the necessary "frontage," as that term was understood locally, in 1957, when the lot was last conveyed prior to the 1959 zoning change that first rendered it unbuildable. Accordingly, the order of the Land Court denying the plaintiff's **[*685]** motion for summary judgment, and granting that of the defendants, must be reversed. **[***2]**

1. *Background*. We summarize the findings set forth in the order on the parties' cross motions for summary judgment, supplemented by other uncontroverted facts in the summary judgment record, Miramar Park Ass'n, Inc. v. Dennis, 480 Mass. 366, 369, 105 N.E.3d 241 (2018), and viewing "the evidence in the light most favorable to the party against whom summary judgment was entered," Conservation Comm'n of Norton v. Pesa, 488 Mass. 325, 330, 173 N.E.3d 333 (2021), here,

Williams.[3] See *Attorney Gen. v. Bailey, 386 Mass. 367, 370-371, 436 N.E.2d 139 (1982)*, and cases cited.

a. *Lot 62*. Plaintiff Thomas F. Williams, acting individually and as trustee of the River Realty Trust, is the record owner of a 2.076-acre undeveloped parcel of land (lot 62), located in residential district A in the town of Norwell (Norwell or town). Williams[4] seeks to build a single-family residence on lot 62, while the defendants, Williams's neighbors Maura A. and Gregory T. Lareau, oppose the proposed construction.

On June 11, 1948, lot 62 was sold by Esther MacKay to James Fox MacDonald, Jr. The deed was recorded at the Plymouth County registry of deeds on June 21, 1948; a plan of land depicting the lot also was recorded in the registry on that day. Lot 62 subsequently was conveyed in 1953, 1957, 1964, and 2002, when it was sold to Williams. Since its creation, lot 62 has not been held in common ownership with any adjoining lots.

The description **[***3]** of lot 62 in the 1948 deed has been perpetuated in all of the subsequent deeds. The description refers to an "existing" right of way that crosses the property, and the way is shown on the 1948 plan as crossing lot 62 for well over one hundred feet. On two recorded plans from 1966 and 1967, a way identified as "Stony Brook Lane" is shown crossing lot 62 in that vicinity. These plans, which were recorded after the town established a planning board and accepted the provisions of the subdivision control law, are endorsed by the town planning board as "Approval Under the Subdivision Control Law Not Required." See *G. L. c. 41, §§ 81K-81GG*. An official town map from 1972 **[*686]** depicts a "private country lane" in the vicinity of the **[**171]** right of way referenced in the description. See *G. L. c. 41, § 81E*.

b. *Prior proceedings*. In 2009, the town's building inspector issued Williams a building permit, which had been approved by the town fire chief, for the construction of a single-family house on lot 62. Defendants William McCauley, Maura A. Lareau, Gregory T. Lareau, Richard Thornton, and Deborah Thornton appealed from the issuance of the building permit to the town zoning board of appeals (ZBA). Following a public hearing, the ZBA revoked the **[***4]** building permit. The ZBA concluded that the permit had been issued prematurely because the planning board had not yet made a determination that lot 62 had frontage on a "street or way" with "suitable width, suitable grades and adequate construction." Under the then-current zoning bylaw, adopted in 2009, such an adequacy determination was required before a lot could be deemed to have frontage on a "private way [that was] in existence when the provisions of [the] subdivision control law became effective in the [t]own of Norwell."

Pursuant to *G. L. c. 40A, § 17*,[5] Williams filed a complaint in the Land Court challenging the ZBA's decision. He argued that lot 62 was protected by *G. L. c. 40A, § 6*,[6] from application of the requirements of the current zoning bylaw, including the requirement that frontage on a private way in existence when the town adopted the subdivision control law was subject to an adequacy determination by the planning board.

In 2011, a Land Court judge conducted a trial on Williams's complaint. Among other witnesses, Williams called the town building inspector. The inspector testified that he was "familiar with Stony Brook Lane" and had granted "other building permits there"; the inspector estimated that there **[***5]** were approximately seven or eight houses on Stony Brook Lane. He also testified to having driven from Main Street onto Stony Brook Lane in order to reach lot 62, and to having seen other vehicles being driven on **[*687]** Stony Brook Lane. Williams testified that he had been traveling the same route since the 1960s, over what is now known as Stony Brook Lane, and that there were no other routes to reach lot 62 from a public way. In addition, Williams, the ZBA, William McCauley, and the

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[3] The uncontroverted facts are derived from the stipulation of facts before the trial in the Land Court, the trial testimony, the zoning board of appeals's findings of fact on remand, and the agreed-upon material facts submitted by the parties in support of their motions for summary judgment.

[4] For simplicity, we refer to Thomas Williams, both individually and in his capacity as trustee of the River Realty Trust, as Williams.

[5] "Any person aggrieved by a decision of the [zoning] board of appeals or any special permit granting authority … may appeal to the land court department … by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk." *G. L. c. 40A, § 17*.

[6] "Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least [5,000] square feet of area and fifty feet of frontage." *G. L. c. 40A, § 6*.

Lareaus stipulated to certain facts, including that "[a]t the time [lot 62] was created and recorded in June 1948, the Zoning Bylaw[ ] in effect in the town of Norwell [was] the 1942 Bylaw[ ], which [was] the town of Norwell's original Zoning Bylaw."

The trial judge's decision, issued in 2013, affirmed the ZBA's decision overturning the issuance of the building permit. The trial judge found that lot 62 did not qualify for protection under G. L. c. 40A, § 6, because it lacked the statutorily mandated fifty feet of frontage; the judge explained that "[t]he 1942 bylaw, which was in effect when lot 62 was created, contained neither **[**172]** a frontage requirement nor a definition of frontage." Therefore, the judge decided, the definition of "frontage" **[***6]** in the 2009 bylaw (the then-current version of the bylaw) should apply for purposes of assessing whether the lot met the minimum frontage requirement under G. L. c. 40A, § 6. As that definition required an adequacy determination of Stony Brook Lane by the planning board, the judge concluded, as had the ZBA, that lot 62 was not buildable. The judge also found, as a separate reason for affirming the revocation of the building permit, that the evidence did not establish that the right of way described in the 1948 deed, as well as in all subsequent deeds, was the way that, at the time of trial, was known as Stony Brook Lane.

Williams appealed, and in 2014 the Appeals Court issued an order vacating the 2013 judgment of the Land Court. See *Williams v. Board of Appeals of Norwell, 86 Mass. App. Ct. 1111, 16 N.E.3d 524 (2014)*. Contrary to the Land Court judge's finding, the Appeals Court concluded that the 1942 zoning bylaw did contain a definition of "frontage" that could be applied to determine whether lot 62 met the requirements of G. L. c. 40A, § 6. The Appeals Court considered the lot width requirement of one hundred feet under the 1942 bylaw, which was to "be measured at the way line or the set back line," effectively to function as a frontage requirement, and as a definition of "frontage," given that **[***7]** the bylaw provided a definition of "way." In addition, the Appeals Court held that "[t]here was no evidence that 'the existing right of way' referred to [in the 1948 deed] was anywhere other than the traveled way that exists today," which was "now referred to as **[*688]** [Stony] Brook Lane." The Appeals Court remanded the matter to the Land Court for further proceedings consistent with the court's opinion. In a 2016 order, a Land Court judge then remanded the matter to the ZBA with instructions that the ZBA reconsider its 2009 decision in light of the Appeals Court's instructions. Following a second public hearing, the ZBA granted Williams's application for a building permit.

The 2016 ZBA decision relied upon a newly discovered document located by a member of the ZBA, who recalled, during the hearing on remand, that the town's original bylaw had been subject to litigation. According to the ZBA, the new document, which consisted of a 1947 Land Court decision that purported to invalidate the 1942 zoning bylaw, demonstrated that no zoning bylaw was in effect when lot 62 was created in 1948. See Lincoln *vs.* Inhabitants of Norwell, Mass. Land Court, No. 9746 Misc. (Jan. 16, 1947). For reasons that **[***8]** it did not explain, the ZBA then applied the definition of "frontage" in the 2009 bylaw, and found that Stony Brook Lane met that definition, as it was "a continuous and uninterrupted 'way'" that provided "'vital' access for emergency vehicles from Main Street to lot 62." The ZBA concluded that, because Stony Brook Lane provided more than fifty feet of frontage, lot 62 "qualifie[d] for separate lot protection under G. L. c. 40A, § 6."

The Lareaus appealed from this second ZBA decision to the Land Court pursuant to G. L. c. 40A, § 17. In 2017, they moved for summary judgment, and Williams filed a cross motion for summary judgment. The motion judge, who was also the trial judge, denied both motions, in part because she deemed the record "devoid of evidence on which to base" a determination under G. L. c. 40A, § 6, in particular with respect to the date on which lot 62 became nonconforming. The judge determined that, "as with the other requirements of [G. L. c. 40A, § 6,] whether [lot 62] satisfies the statutory frontage requirement is to be evaluated as of the date of the most recent instrument of record prior to the zoning **[**173]** change which rendered [lot 62] nonconforming," but noted that the record did not establish when lot 62 became nonconforming.

In 2019, given **[***9]** the retirement of the first Land Court judge, the matter was reassigned to a different Land Court judge. After further discovery, the parties again filed cross motions for summary judgment. Following a hearing, in 2020 the motion judge allowed the Lareaus' motion for summary judgment and denied **[*689]** Williams's cross motion. The judge determined that the 1959 amendments to the zoning bylaw "rendered [l]ot 62 nonconforming, as the prior bylaws did not impose any frontage requirement on a lot of its size (more than two acres)." The judge also determined that the 1957 deed was the most recent instrument of

record prior to the adoption of the 1959 amendments, and that, because lot 62 met all other requirements of G. L. c. 40A, § 6, in 1957, the only issue before the court was whether lot 62 had had at least fifty feet of frontage at that time.

In addressing that question, the judge observed that the available sources to define frontage were the 1955 zoning bylaw, which was controlling in 1957, the 1959 bylaw, which rendered lot 62 nonconforming, and the 2009 bylaw, which was controlling at the time the building permit was issued. The judge concluded that "[w]hichever of these three options is chosen, the result **[***10]** is the same. All require frontage, if on a [private] way, then on one approved by the [p]lanning [b]oard." As no approval by a planning board was documented for Stony Brook Lane, the judge determined that lot 62 did not satisfy the minimum frontage requirement set forth in G. L. c. 40A, § 6.

Thus, the 2020 Land Court decision annulled the ZBA's decision on remand, as well as the issuance of the building permit to Williams. Williams again appealed, and the Appeals Court issued a decision in 2021 reversing the 2020 Land Court decision and reinstating the 2016 ZBA decision allowing the application for a permit. See *Williams v. Board of Appeals of Norwell, 100 Mass. App. Ct. 1102, 172 N.E.3d 431 (2021)*. The Appeals Court concluded that the second Land Court judge had failed to follow the order the Appeals Court had issued in 2014 instructing the Land Court to determine whether lot 62 met the minimum frontage requirement in G. L. c. 40A, § 6, under the 1942 zoning bylaw. The Appeals Court emphasized that the Land Court judge had been bound by the terms of its 2014 decision, and that the judge's decision therefore "exceeded the scope of the judge's authority." We allowed the Lareaus' application for further appellate review.

2. HN1[] *Discussion*. The allowance of a motion for summary judgment "is appropriate where **[***11]** there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law." Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group, 469 Mass. 800, 804, 17 N.E.3d 1056 (2014). "We review a decision on a motion for summary judgment de novo and, thus, accord no deference to the decision of the motion **[*690]** judge" (quotation omitted). Tracer Lane II Realty, LLC v. Waltham, 489 Mass. 775, 778, 187 N.E.3d 1007 (2022), quoting Boelter v. Selectmen of Wayland, 479 Mass. 233, 237, 93 N.E.3d 1163 (2018).

Williams argues that the second Land Court judge erred in concluding that, in 1957, lot 62 did not have sufficient "frontage" to qualify for protected status under G. L. c. 40A, § 6. In addition, Williams maintains that the judge erred in failing to follow the 2014 Appeals Court's instruction to use the 1942 bylaw to determine whether lot 62 had adequate "frontage" under the statute.

[174]** HN2[] a. *Statutory interpretation*. "Our primary duty in interpreting a statute is to effectuate the intent of the Legislature in enacting it" (quotation omitted). Sheehan v. Weaver, 467 Mass. 734, 737, 7 N.E.3d 459 (2014), quoting Water Dep't of Fairhaven v. Department of Envtl. Protection, 455 Mass. 740, 744, 920 N.E.2d 33 (2010). "We begin with the language of the statute itself and presume, as we must, that the Legislature intended what the words of the statute say" (quotation omitted). Sheehan, supra, quoting Commonwealth v. Young, 453 Mass. 707, 713, 905 N.E.2d 90 (2009). We do not interpret the statutory language, however, so as to render it or any portion of it meaningless. See Casa Loma, Inc. v. Alcoholic Beverages Control Comm'n, 377 Mass. 231, 234, 385 N.E.2d 976 (1979). "The construction of a statute which leads to a determination that a piece of **[***12]** legislation is ineffective will not be adopted if the statutory language 'is fairly susceptible to a construction that would lead to a logical and sensible result.'" Adamowicz v. Ipswich, 395 Mass. 757, 760, 481 N.E.2d 1368 (1985), quoting Lexington v. Bedford, 378 Mass. 562, 570, 393 N.E.2d 321 (1979).

HN3[] General Laws c. 40A, § 6, "is concerned with protecting a once-valid lot from being rendered unbuildable for residential purposes, assuming the lot meets modest minimum area … and frontage … requirements." Adamowicz, 395 Mass. at 763, quoting Sturges v. Chilmark, 380 Mass. 246, 261, 402 N.E.2d 1346 (1980). The "statutory policy of keeping once-buildable lots buildable" is "grounded in principles of fairness to landowners." Rourke v. Rothman, 448 Mass. 190, 197, 859 N.E.2d 821 (2007). "Consistent with this policy, we have construed various provisions of [G. L. c. 40A, § 6,] broadly to protect landowners' expectations of being able to build on once-valid lots," *id.*, and to avoid the hardship that would result from a lot losing its buildable status, see id. at 197 n.14 (collecting cases).

HN4[] "[T]he first sentence of G. L. c. 40A, § 6, fourth par., grants a perpetual exemption from increased local zoning requirements to **[*691]** certain lots that were once buildable under local bylaws," provided that certain conditions are met. See Rourke, 448 Mass. at 192, 194.

"These conditions are that, 'at the time of recording or endorsement,' the lot (1) had at least 5,000 square feet [of area] with fifty feet of frontage, (2) 'was not held in common ownership with any adjoining **[***13]** land,' and (3) 'conformed to then existing requirements.'" *Id. at 192*, quoting *G. L. c. 40A, § 6*.

[] b. *Lot 62's status as a protected lot*.[7] The parties agree that, as a two-acre lot, lot 62 always has had more than 5,000 square feet of area. They also agree that lot 62 was never held in common ownership with any adjoining land. Thus, whether lot 62 is protected under *G. L. c. 40A, § 6*, depends on whether, "at the time of recording or endorsement," the lot had at least fifty feet of frontage and conformed to then-existing requirements.

To determine the applicable date of recording or endorsement to use in examining whether lot 62 had sufficient frontage and conformed with other then-existing requirements requires two additional preliminary determinations. The court first must **[**175]** decide when the lot became nonconforming. See *Rourke, 448 Mass. at 192*, quoting *Adamowicz, 395 Mass. at 762* ("We have interpreted the 'time of recording or endorsement' to mean the time of 'the most recent instrument of record prior to the effective date of the zoning change'" that rendered lot nonconforming). ***HN5***[] The court then must identify the last deed conveying the lot that was recorded or endorsed before the amended bylaw went into effect that made the lot nonconforming. See *Rourke, supra*, quoting *Adamowicz, supra*.

The second Land Court judge **[***14]** concluded that lot 62 became unbuildable upon the adoption of the 1959 amendments to the zoning bylaw, as the prior bylaws did not impose any frontage requirement on two-acre lots. The judge found that, under the 1959 bylaw, lot 62 was located in residential district A.[8] The 1959 **[*692]** amendments required lots in residential district A that were two or more acres in area, such as lot 62, to have forty feet or more of frontage "on a public way or on a way approved by the [p]lanning [b]oard." See Norwell zoning bylaw, § 7(A), as amended Sept. 21, 1959. Because the judge decided that Stony Brook Lane was not a public way or "a way approved by the planning board" in 1959,[9] she determined that lot 62 lacked sufficient frontage under the 1959 bylaw. She therefore concluded that the time of "recording or endorsement" was September 24, 1957, the date on which the 1957 deed was recorded, as that deed was "the most recent instrument of record" prior to the adoption of the bylaw that made lot 62 nonconforming. Ultimately, because lot 62 necessarily "conformed to then-existing requirements" in 1957, when the last deed was recorded before the 1959 amendments were adopted, the critical question then becomes **[***15]** whether lot 62 also had at least fifty feet of frontage in 1957.

"Because G. L. c. 40A does not define 'frontage,' we

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[7] Because this court has the authority to review legal issues the Appeals Court already has decided, see *G. L. c. 211, § 3*, we are not bound by the Appeals Court's 2014 decision, which remanded the case to the Land Court for an analysis of whether lot 62 met the requirements of *G. L. c. 40A, § 6*, when the lot was created in 1948. For that reason, and in light of the result we reach, we need not address Williams's argument that the second Land Court judge erred in failing to follow the Appeals Court's instructions on remand.

[8] Although Williams does not appear to dispute that, as of 2016 (when the 2009 bylaws were in effect), lot 62 is located in residential district A, he disputes that lot 62 was located in residential district A either in 1955 or 1959. According to Williams, lot 62 was located in overlay district C under both the 1955 and 1959 bylaws. This distinction, however, is irrelevant for purposes of our analysis. "An overlay district is a type of zoning district that 'lies' on top of the existing zoning, and potentially covers many underlying districts or portions thereof." Executive Office of Energy and Environmental Affairs, Smart Growth/Smart Energy Toolkit Modules — Zoning Decisions, Overlay Districts, *https://www.mass.gov/service-details/smart-growth-smart-energy-toolkit-modules-zoning-decisions* [*https://perma.cc/7LME-TSW3*]. See *KCI Mgt., Inc. v. Board of Appeals of Boston, 54 Mass. App. Ct. 254, 259, 764 N.E.2d 377 (2002)*, quoting Salsich & Tryniecki, Land Use Regulation 167 (1998) ("The typical overlay district is not an independent zoning district but simply a layer that supplements the underlying zoning district regulations"). Thus, whether lot 62 was located in overlay district C in 1955 or 1959 has no bearing on the fact that the lot also was located in residential district A, and therefore was subject to the requirements for that district.

[9] We undertake our analysis accepting for this purpose the judge's determination that Stony Brook Lane indeed had not been effectively approved by the planning board at that time. As Williams notes, however, the 1954 planning board rules and regulations, the first such rules issued in the town after its adoption of the subdivision control law in 1953, provide that all plans "showing subdivisions recorded before February 1, 1952 have the same effects as approved plans." In addition, Stony Brook Lane is depicted as crossing lot 62 on two plans endorsed by the planning board (in the 1960s) as "Approval Not Required" under the subdivision control law.

look to the applicable town bylaw for a definition."[10] Marinelli v. **[**176]** Board of Appeals of Stoughton, 440 Mass. 255, 262, 797 N.E.2d 893 (2003). The second **[*693]** Land Court judge did not identify which of the town's bylaws was the "applicable town bylaw" to be used in making this determination; rather, she concluded that, whether that bylaw was the 1955 bylaw, the 1959 bylaw, or the 2009 bylaw, the result would be the same: lot 62 did not have "frontage" to qualify for statutory protection under G. L. c. 40A, § 6.[11]

As an initial matter, we emphasize that it would defeat the purpose of G. L. c. 40A, § 6, to define "frontage" using a bylaw that was adopted **[***16]** years after "the time of recording or endorsement" of the relevant plan or deed to decide whether the lot was buildable when that plan or deed was recorded or endorsed. See Rourke, 448 Mass. at 197 (purpose of G. L. c. 40A, § 6, is "to protect landowners' expectations of being able to build on once-valid lots"). **HN6**[↑] The "applicable town bylaw" is the bylaw that was in effect at the time of the relevant recording or endorsement. See Marinelli, 440 Mass. at 262. Thus, whether lot 62 had at least fifty feet of frontage at the time of recording of the 1957 deed, for purposes of protection under G. L. c. 40A, § 6, depends on what "frontage" meant in the town in 1957. This, in turn, depends on how that term was used in the 1955 bylaw, the controlling bylaw in 1957.

HN7[↑] We construe the meaning of a bylaw using "ordinary principles of statutory construction," beginning with the plain language of the bylaw. See Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 477, 961 N.E.2d 1055 (2012), quoting Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham, 382 Mass. 283, 290, 415 N.E.2d 840 (1981). "When a statute does not define its words we give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose. … We derive the words' usual and accepted meanings from sources presumably known to the statute's enactors, such as their use in other **[*694]** legal contexts and dictionary definitions." Commonwealth v. Morasse, 446 Mass. 113, 116, 842 N.E.2d 909 (2006), quoting Commonwealth v. Bell, 442 Mass. 118, 124, 810 N.E.2d 796 (2004). "To the extent **[***17]** that the meaning of a statute remains unclear, we seek to 'ascertain the intent of a statute from all its parts'" (citation omitted). Commonwealth v. Morgan, 476 Mass. 768, 777, 73 N.E.3d 762 (2017). "[W]e look to the language of the entire statute, not just a single sentence, and attempt to interpret all of its terms harmoniously" (quotation and citation omitted). Commonwealth v. Hanson H., 464 Mass. 807, 810, 985 N.E.2d 1181 (2013). "Where the language is not conclusive, 'we may turn to extrinsic sources, including the legislative history and other statutes, for assistance in our **[**177]** interpretation.'" Ciani v. MacGrath, 481 Mass. 174, 178, 114 N.E.3d 52 (2019), quoting Commonwealth v. Wynton W., 459 Mass. 745, 747, 947 N.E.2d 561 (2011).

The second Land Court judge appears to have accepted, without discussion, the Lareaus' argument that, although the 1955 bylaw did not define the term "frontage," such a definition was implied by the bylaw's requirement that lots of a certain size in residential district A have "frontage of 150 feet or more on a [p]ublic [w]ay, or on a [w]ay approved by the [p]lanning [b]oard." See Norwell zoning bylaw, § 7, as amended June 14, 1955. The judge concluded, based on this requirement, that the word "frontage," as it appears in the 1955 bylaw, meant only frontage on a public way or on a private way that had received planning board approval. This assessment, however, disregards the fact that, under the same 1955 bylaw, **[***18]** lots in residential district C were buildable, without planning board approval, so long as they had "frontage … on a [p]ublic or [p]rivate [w]ay." See *id.*

In ascertaining the meaning of the word "frontage" in the 1955 bylaw, we cannot disregard the manner in which that term was used later in the very same section. See

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[10] We do not define "frontage" for purposes of G. L. c. 40A, § 6, with reference to the definition of that term in the subdivision control law. "To define frontage in [G. L.] c. 40A, § 6, by importing the criteria of [G. L.] c. 41, § 81L, would not serve the purpose of 'protecting a once valid lot from being rendered unbuildable.'" LeBlanc v. Board of Appeals of Danvers, 32 Mass. App. Ct. 760, 764, 594 N.E.2d 906 (1992), quoting Sturges v. Chilmark, 380 Mass. 246, 261, 402 N.E.2d 1346 (1980).

[11] Specifically, the judge found that, in the 1955 zoning bylaw,

> "[a]ccording to the Lareaus, the minimum lot size requirement implicitly defines frontage as being on a public way or a way approved by the [p]lanning [b]oard. The other available sources to define frontage are the zoning bylaw that rendered [l]ot 62 nonconforming, the 1959 [zoning bylaw], or the zoning bylaw in effect at the time of Mr. Williams' application to the building inspector, the 2009 [zoning bylaw]. Whichever of these three options is chosen, the result is the same. All require frontage, if on a way, then on one approved by the [p]lanning [b]oard."

Commonwealth v. Fleury, 489 Mass. 421, 429, 183 N.E.3d 1145 (2022), quoting *Chin v. Merriot, 470 Mass. 527, 532, 23 N.E.3d 929 (2015)* ("a statute must be interpreted 'as a whole'; it is improper to confine interpretation to the single section to be construed"). ***HN8***[↑] Where the same statutory term is used more than once, "the term should be given a consistent meaning throughout." *Morgan, 476 Mass. at 777*, quoting *Commonwealth v. Hilaire, 437 Mass. 809, 816, 777 N.E.2d 804 (2002)*. "[T]he need for uniformity [in interpreting statutory language] becomes more imperative where … a word is used more than once in the same section." 2B **[*695]** N.J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 51:2 (7th ed. rev. 2012), quoting *Commissioner of Internal Revenue v. Estate of Ridgway, 291 F.2d 257, 259 (3d Cir. 1961)*. ***HN9***[↑] Indeed, we repeatedly have rejected constructions of words in a statute that would "require us to attribute different meanings to the same words in the same paragraph," or impose two different meanings to a word within one section. See *DiCarlo v. Suffolk Constr. Co., 473 Mass. 624, 629, 45 N.E.3d 571 (2016)*, quoting *Bilodeau v. Lumbermens Mut. Cas. Co., 392 Mass. 537, 543, 467 N.E.2d 137 (1984)*.

The Land Court judge's interpretation of the word "frontage" as meaning only frontage on a public way **[***19]** or on a private way approved by the planning board, based on the usage of the term in setting forth the requirements for lots in residential district A, is at odds with the manner in which that term is used later in that section, and elsewhere in the bylaw, with no explanation of any reason to depart from our well-established canon of statutory construction that we not interpret the same word to mean different things when used in different places in the same section.

In addition, the Land Court judge's interpretation of the word "frontage" in the 1955 bylaw is at odds with the definition of "frontage" set forth in dictionaries from that time. See *Commonwealth v. Keefner, 461 Mass. 507, 513 n.3, 961 N.E.2d 1083 (2012)* (where statute does not define word, reviewing court gives word its usual and accepted meaning, which may be derived from dictionaries and other "sources presumably known to the statute's enactors" [citation omitted]). In 1951, Black's Law Dictionary defined "frontage" as the "[e]xtent of front along [a] road or street." See Black's Law Dictionary 797 (4th ed. 1951). Similarly, in common usage at around that **[**178]** time, "frontage" was defined as "extent of front, as of land along a stream or road" or the "[a]ct or fact of fronting or facing a given **[***20]** way." See Webster's New International Dictionary of the English Language 871 (1926). See also 4 Oxford Universal Dictionary on Historical Principles 755 (rev. ed. 1937) (defining "frontage" as "[l]and which abuts on a river or piece of water, or on a road").

At this time, "way" was used as a general term that encompassed multiple different types of pathways on which travel could be accomplished. For instance, in 1951, Black's Law Dictionary defined "way" as a "passage, path, road or street." See Black's **[*696]** Law Dictionary 1764 (4th ed. 1951).[12] Similarly, in common usage, "way" included "road, street, track, or path." Webster's New International Dictionary of the English Language 2313 (1926). See 10 Oxford Universal Dictionary on Historical Principles 2396 (rev. ed. 1937) (defining "way" as "[r]oad, path").

Notably, although the term "way" was not defined in the town's 1955 bylaw, or in the preceding bylaw from 1952, it was defined in the town's original bylaw from 1942 as "a passage, street, road, or bridge, public or private." See Norwell zoning bylaw, *§ 1*, adopted Mar. 30, 1942. As neither the 1952 nor the 1955 bylaw adopted a different definition of the word "way," the definition from 1942 **[***21]** provides valuable insight into what that word meant in the town when the 1955 bylaw was adopted.[13] See *Perry v. Zoning Bd. of Appeals of Hull, 100 Mass. App. Ct. 19, 21-23, 174 N.E.3d 316 (2021)* (inferring definition of "way" that differs from definition of "street" from zoning bylaw's use of both terms in one place and only one term in another place).

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[12] The definition of way in modern times has remained essentially unchanged. See Black's Law Dictionary 1908 (11th ed. 2019) (defining "way" as "passage or path" and "private way" as "right to pass over another's land" or "way provided by local authorities primarily to accommodate particular individuals … but also for the public's passage").

[13] The fact that, in 1947, a Land Court judge held that the 1942 bylaw was invalid due to certain technical details about the entity that appointed the committee that recommended the bylaws at a town meeting does not alter our conclusion. The bylaw was invalidated because it was not adopted in strict compliance with the procedure set forth in the then-existing zoning enabling act, *G. L. c. 40, § 27*, as amended through St. 1933, c. 269, § 1. See Lincoln *vs.* Inhabitants of Norwell, Mass. Land Court, No. 9746 Misc., slip op. at 11-13 (Jan. 16, 1947). Regardless of whether the provisions of the bylaw had any binding force after 1947, its definitions of terms indicate what those terms meant in the town at the time that the bylaw was drafted, voted upon, and believed to have been properly adopted.

HN10[↑] Ultimately, the meaning of words in a local zoning bylaw "must be arrived at by consideration of the legislative purpose." See *Sturges, 380 Mass. at 261*. In light of the manner in which the word is used in the 1955 bylaw, and in the bylaw the town attempted to adopt in 1942, as well as contemporaneous dictionary definitions, we conclude that the word "frontage," as used in the town's 1955 bylaw, referred to frontage on a "way," regardless of whether that way was public or private and, if the latter, whether the planning board had approved it. This conclusion is consistent with the purpose of *G. L. c. 40A, § 6*, to protect a once-buildable lot from becoming unbuildable.

[*697] As the deed of September 24, 1957, makes clear, what is now known as Stony Brook Lane was known in 1957 as an "existing right of way." Our case law from the 1920s, 1930s, and 1940s indicates that a "right of way" was considered to be a type of "way." See *Ampagoomian v. Atamian, 323 Mass. 319, 322, 81 N.E.2d 843 (1948)* **[**179]** (referring to "right of way" as "way"); *Swensen v. Marino, 306 Mass. 582, 583, 29 N.E.2d 15 (1940)* (same); **[***22]** *Panikowski v. Giroux, 272 Mass. 580, 581, 172 N.E. 890 (1930)* (same); *Brooks v. Quinn, 266 Mass. 132, 134-136, 164 N.E. 822 (1929)* (same); *Wood v. Wilson, 260 Mass. 412, 414 (1927)* (same). Accordingly, we conclude that lot 62 had frontage on a "way" in 1957.

In sum, in 1957, lot 62 had over fifty feet of "frontage" on a "way," which is now known as Stony Brook Lane. Lot 62 therefore is protected as a buildable lot pursuant to *G. L. c. 40A, § 6*.

3. *Conclusion*. The Land Court judge's order allowing the Lareaus' motion for summary judgment is vacated and set aside, and the matter is remanded to the Land Court for entry of an order allowing Williams's motion for summary judgment.

So ordered.

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