

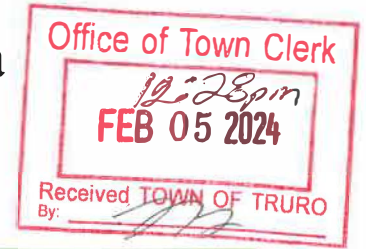


# Truro Planning Board Agenda

## Remote Zoom Meeting

Wednesday, February 7, 2024 – 5:00 pm

[www.truro-ma.gov](http://www.truro-ma.gov)



Join the meeting from your computer, tablet or smartphone:

<https://us02web.zoom.us/j/86702500163>

Dial in: [+1-646-931-3860](tel:+16469313860) or [+1-305-224-1968](tel:+13052241968)

Meeting ID: [867 0250 0163](#) Passcode: [938636](#)

### Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web on the "Truro TV Channel 8" button under "Helpful Links" on the homepage of the Town of Truro website ([www.truro-ma.gov](http://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. 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 Assistant, at [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov).

### 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 – January 10, 2024

### Board Discussion

- ◆ Planning Board priorities for possible 2024 ATM zoning bylaw changes
  - Affordable Housing on Undersized Lots
  - Mean Grade, Building Height, Roof Slope
  - Street Inventory

### Board Action/Review

- ◆ **2023-002/PB Preliminary Subdivision** – 9B Benson Road, Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, Trustees [Material in 11/15/2023 and 1/24/2024 packets] {New material included in this packet}

Next Work Session: Wednesday, February 14, 2024

- Affordable Housing on Undersized Lots [Public comment sought and welcomed]

Next Meeting: Wednesday, February 21, 2024 at 5:00 pm

### Adjourn



# TOWN OF TRURO

## PLANNING BOARD

Meeting Minutes

January 10, 2024 – 5:00 pm

REMOTE PLANNING BOARD MEETING

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

**Members Absent:**

**Other Participants:** Town Planner/Land Use Counsel Barbara Carboni; Select Board Liaison John Dundas; Michael Forgione (Truro Voter)

Remote meeting convened at 5:00 pm, Wednesday, January 10, 2024, by Chair Roberts who announced that this was a remote public meeting aired live on Truro TV Channel 8 and was being recorded. Town Planner/Land Use Counsel Carboni 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 Roberts.

Chair Roberts recognized Mr. Forgione who commented on the Select Board's recent discussion to create an Ad Hoc Zoning Board Task Force to promote housing development and economic development. Chair Roberts thanked Mr. Forgione for his comments and noted that the Members could not discuss a topic that was not listed on the agenda.

**Planner Report**

Town Planner/Land Use Counsel Carboni reported that she had a scheduled technical assistance meeting with the staff of the Cape Cod Commission on January 18, 2024 regarding the Cater preliminary subdivision application for 9B Benson Road. Town Planner/Land Use Counsel Carboni also noted that the Cape Cod Commission staff would provide comments to the Planning Board by January 24, 2024.

**Chair Report**

Chair Roberts reported that he and Member Althaus had attended a workshop yesterday on ADUs held by the Lower Cape Housing Initiative. Cape Cod Commission was in attendance and will post the recording of the workshop on its website. Chair Roberts also noted that yesterday was the first of two seminars by the Attorney General's Office on bylaws and Member Riemer had attended that seminar. Member Riemer provided a brief overview of the 2-hour seminar to the Members.

Chair Roberts also said that the hearing for 9B Benson Road will be heard on January 24, 2024. The site visit to the property was successful and five members of the Planning Board attended the site visit.

Chair Roberts noted that the Select Board's discussion of an Ad Hoc Zoning Board Task Force and the Planning Board will engage with the Select Board's Vice Chair Areson on this topic.

### **Minutes**

Chair Roberts led the review of the minutes from December 6, 2023 and Vice Chair Greenbaum corrected the first sentence on page 1 of the Planner Report from "announced that an appeal had been filed by the Planning Board" to "announced an appeal had been filed on the Planning Board's decision". The word "by" was replaced by "on."

**Vice Chair Greenbaum made a motion to approve the minutes of December 6, 2023, corrected.**

**Member Frazier seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend - Aye**

**Member Althaus - Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

### **Board Discussion**

Chair Roberts led the discussion of Planning Board priorities for possible 2024 Annual Town Meeting (ATM) zoning bylaw changes with the Members.

- **Affordable Housing on Undersized Lots**

Member Althaus provided a brief overview of the draft bylaw that is the Wellfleet bylaw with several edits that made it Truro specific. was forwarded to Vice Chair Greenbaum for additional edits. Vice Chair Greenbaum reviewed the number of 37 private undersized lots and the 14 undersized lots owned by Truro for a total of 51 undersized lots which could be helpful in increasing the affordable housing stock.

Members and Town Planner/Land Use Counsel Carboni discussed: deed restrictions (build to rent at an affordable cost, own and build but meet affordability guidelines, and build without affordability guidelines but any sale would have to meet affordability guidelines) and the requirement of year-round leases only.

Members and Town Planner/Land Use Counsel Carboni then decided to table a further discussion on whether to include or exclude the National Seashore District on the topic of affordable housing on undersized lots (under 3 acres) as this may not adhere with federal law or National Seashore regulations.

Members discussed “by right” or “by special permit” pros and cons, the “colony effect,” parking tied to bedrooms, no ADU on an undersized lot, and the topic of a monitoring agent as an enforcement mechanism and ensure compliance of the bylaw.

- **Mean Grade, Building on Height, Roof Slope**

Members discussed calculating building height (reviewed examples from Ridgefield, CT, Harwich, MA and Wellfleet, MA), the separation between various roofs (gable, hip, A-frame, salt box, and gambrel), “story” related terms, various definitions for terms associated with building height and roof pitch, mean ground level (to include a base flood elevation that would become the basis rather than mean ground level in a flood zone), and a future discussion on safety concerns surrounding more intense storms which occur more frequently.

Vice Chair Greenbaum asked Town Planner/Land Use Counsel Carboni when the Warrant would open and Town Planner/Land Use Counsel Carboni said that the Warrant opens on February 2, 2024, and closes on March 4, 2024.

- **Street Inventory**

Member Kiernan summarized the Truro Street Inventory Summary that was completed on January 16, 2023. Member Kiernan reviewed in detail the total number of roads (350), town/state roads (48), subdivision roads (254), proprietor’s roads (24), and roads which are actually easements (24). Member Kiernan also noted that additional address information is accessible on the online Assessor’s atlas and the Barnstable County Registry of Deeds.

Chair Roberts and Member Riemer thanked Member Kiernan for his hard work in compiling the Truro Street Inventory and the work that has been completed. Chair Roberts asked Member Kiernan to develop a verification procedure for the accuracy of the Truro Street Inventory which will be taken under consideration by the Planning Board at a later meeting.

- **Lot Clearing**

Member Frazier has collected information from Brewster, MA and the Cape Cod Commission regarding lot clearing and will put together a document to share with the Members. Member Frazier will provide an update at the next meeting.

- **Lot Coverage**

Chair Roberts noted that there has not been any progress and it may be a topic that the Members may not pursue.

Members discussed addressing lot coverage for the development of small lots (Member Riemer noted Wellfleet has a small lot bylaw that intersects with any development on any small lots), the impact on drinking water usually from private water sources, and the exploration of what neighboring towns are doing regarding lot coverage.

Chair Roberts and Town Planner/Land Use Counsel Carboni agreed that there may not be adequate time for the Members to properly work on this topic prior to the Warrant being opened and it is a complicated issue.

Town Planner/Land Use Counsel Carboni also noted that lot coverage issues are not typically an issue that she has seen in applications submitted to the Planning Board or Zoning Board of Appeals. Town Planner/Land Use Counsel Carboni said that she had compiled some information on this topic in October 2021 and she will attempt to find the information. Chair Roberts noted that it was not urgent but sharing the information with the Members would be helpful.

Prior to the adjournment of the meeting, Chair Roberts discussed with the Members an administration correction in regard to the size of ADUs within the bylaw as there were different maximum limits. Member Kiernan noted that this changed on the floor of a previous Town Meeting when the size was reduced from 1,000 square feet to 900 square feet. Member Kiernan said that the previously approved ADUs at 1,000 square feet were classified as a preexisting nonconforming lot. Member Kiernan stated that the 900 square feet maximum was to conform with what the Commonwealth of Massachusetts was using for ADUs. Chair Roberts said that he will do additional research to see what relief will be required for those oversized ADUs and provide an update to the Members.

Chair Roberts announced that the next meeting would be on Wednesday, January 24, 2024, and briefly reviewed the agenda for that meeting. Member Riemer requested that the discussion on the Ad Hoc Zoning Board Task Force be added to the next meeting's agenda and there were no objections.

**Chair Roberts made a motion to adjourn at 6:51 pm.**

**Member Riemer seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Althaus - Aye**

**Member Townsend – Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

Attainable Housing on Undersized Lots  
Feb 2, 2024

To see if the Town will vote to amend Section () and Section 30.2, Use Table, of the Zoning Bylaw by amending section 40 to add section § 40.8.

40.8 Attainable Residence on Undersized Lots:

- A. Purpose: The purpose of this bylaw is to increase the supply of housing that is available in the town of Truro, by allowing attainable dwellings to be built on lots that do not meet the minimum lot size for the zoning district, provided the lots meet the criteria listed herein.
- B. This bylaw shall apply to lots of record as of January 1, 2024, as recorded in a deed or plan on file with the Barnstable County Registry of Deeds or Land Court, regardless of whether the lot is held in common ownership with an adjoining lot, which do not meet the minimum lot size for the zoning district as determined by the Building Inspector.
- C. This bylaw shall apply to lots in all districts except Beach Point.
- D. Any dwellings created under this bylaw *on private land*, shall be designated as low or moderate income units, subject to an affordable housing deed restriction and Regulatory Agreement in accordance with MGL c. 40B, §§ 20-23, 760 CMR 56.00 the Local Initiative Program (LIP) and shall meet the guidelines and standards promulgated thereunder by the Executive Office of Housing and Livable Communities (EOHLC) formerly the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Subsidized Housing Inventory as Local Action Units.
- E. For purposes of this bylaw, "Attainable" shall mean that the units are available for ownership or rental to households earning at or below 100% of the Barnstable County Area Median Income (AMI), adjusted for household size and shall remain affordable in perpetuity or for the longest period allowed by law.
- F. REQUIREMENTS The Building Commissioner may allow construction of a One Family Dwelling, restricted by a Regulatory Agreement and/or

Affordable Housing Deed Restriction in a form acceptable to the Executive Office of Housing and Livable Communities (EOHLC), executed and recorded by the applicant, as an affordable homeownership or rental dwelling unit in perpetuity or the maximum time period allowed by law, on an eligible parcel of land that meets the following criteria:

1. Parcel, at time of application, is not improved with any existing dwelling unit.
2. Parcel contains at least 10,000 square feet of contiguous upland area.
3. All applicable provisions of the building, health and safety codes, as determined by the Building Commissioner and Board of Health shall be met.
4. Parcel satisfies applicable Town of Truro's Conservation Commission Environmental Protection Regulations. Parcel has a minimum of *20 feet of frontage* on a way previously approved by the Planning Board under the Subdivision Control Law or a public way, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide the needs of vehicular traffic. Lots without a minimum of 20 feet of frontage on a way may be permitted under this section if there is an adequate recorded access easement of at least 20 feet in width from the lot to a way previously approved by the Planning Board under the Subdivision Control Law or a public way, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide the needs of vehicular traffic and emergency response apparatus.
5. The building setbacks shall not be less than 15 feet.
6. If a dwelling is built within 25 feet of any other dwelling or principal structure screening of at least six feet in height be created and maintained if requested by the abutter in writing to the Building Commissioner. The screening may be fencing, planting or a combination.
7. The building must comply with the house size bylaws
  - a. For lots in all districts except the Seashore District, Section 50.2 of the Zoning Bylaws shall apply. *Total Gross Floor Area of the new or expanded structure(s) does not exceed 3,600*

*sq. ft. for a Residential District Minimum Lot Size of 33,750 sq. ft. (or .775 acre) and prorated to 3,668 sq. ft. for one acre of land. For lot size less than one acre, the square foot shall be reduced by 150 sq. ft. for each half acre or fraction thereof prorated. For example:*

10,000sqft lot - total gross floor area: 1,066 sq ft

20,000sqft lot - total gross floor area: 2,132 sq ft

30,000sqft lot - total gross floor area: 3,198 sqft

b. For all lots in the Seashore District, Section 30.3 of the Zoning Bylaws shall apply. *Total Gross Floor Area of the lot does not exceed 3,600 sq. ft. for 3 acres, minus 200 sq. ft. for each contiguous acre less than 3 acres, pro-rated for a portion of an acre. For example:*

2.5 acre lot – total gross floor area: 3,500 sq. ft.

2 acre lot - total gross floor area: 3,400 sq. ft

1 acre lot - total gross floor area: 3,200 sq. ft

.5 acre lot - total gross floor area: 3,100 sq. ft

- G. An applicant under this section shall submit a site plan that depicts:
1. the dimensions and setbacks of the subject Parcel, and
  2. the proposed structure on the subject Parcel
  3. the existing setbacks of principal structures on the lots immediately adjacent.
  4. The site plan shall show a parking plan, and comply with parking requirements for “affordable Dwelling Unit” in 30.9 Parking Regulation use table of 2 spaces per unit. Tandem parking is permitted. A waiver may be requested from the Zoning Board of Appeals.

H. A Parcel shall not be built upon if the Parcel was purposely created, subject to a deed restriction or designated as an unbuildable lot as part of a subdivision open space or park, or by any other condition or agreement with the Town.



I. No part of any access driveway may be within 15 feet of a principal structure on an adjoining lot.

J. Accessory Dwelling Units are not permitted on undersize lots

K. Rental of the dwelling for a period of less than twelve (12) months (including, but not limited to, seasonal rental and rental through vacation rental services and websites) is prohibited. Proof of year-round rental shall be provided annually to the Building Commissioner or their designee, by the owner in the form of a lease and a signed affidavit from both the owner and renter stating the unit is being rented accordingly and is used as the renter's primary residence. The proof shall be submitted to the Building Commissioner or their designee prior to initial occupancy and by May 1 each following year. (Monitoring Agent. The Affordable Housing Deed Restriction shall identify a Monitoring Agent who shall ensure compliance with said deed restriction.

L. *(can we simplify this?)* The Applicant must submit a Regulatory Agreement and Affordable Housing Deed Restriction, to be approved as to form by Town Counsel, that restricts the use of the dwelling unit to low- or moderate- income housing in perpetuity, or the maximum time period allowed by law. Said Regulatory Agreement shall include an Affirmative Fair Marketing Plan that complies with EOHCL's requirements for the selection of income-eligible tenants/occupants and shall identify a Monitoring Agent who shall be responsible for ensuring that any re-sales of units created under this bylaw shall be made to income- eligible purchasers and comply with the Affirmative Fair Marketing Plan and Affordable Housing Deed Rider. If the lot is owned privately, the Applicant, shall work with the Town to provide any information necessary to ensure that units created under this bylaw are eligible for inclusion on the Subsidized Housing Inventory maintained by the EOHCL's as Local Action Units. No building permit shall be issued until the Regulatory Agreement and Affordable Housing Deed Rider has been approved by Town Counsel, executed by all parties, and recorded at the Registry of Deeds and proof of such recording has been furnished to the Building Commissioner.

40.8.4. Transfer or Lease. A lot developed with a One Family Dwelling under this section shall be transferred or leased at such affordable re-sale price or rent set forth in the Regulatory Agreement.

40.8.5. No Building Permit shall be issued by the Building Commissioner until the developer has demonstrated that all of the applicable requirements of § 40.8.3 have been met.

40.8.6. Conflicts with other bylaws. The provisions of this bylaw shall be considered supplemental to all other zoning bylaws. To the extent that a conflict exists between this bylaw and others, this bylaw section, and the provisions therein, shall apply.

30.2 use table

	R	BP	NT6A	TC	NTC	RT6	S
Attainable Undersized Lot	Y	N	Y	Y	Y	Y	Y

**From:** [Barbara Carboni](#)  
**To:** [Elizabeth Sturdy](#)  
**Subject:** Fw: 9B Benson Road  
**Date:** Wednesday, February 7, 2024 4:28:12 PM  
**Attachments:** [image004.png](#)  
[image005.png](#)

---

Barbara Carboni AICP  
Truro Town Planner and Land Use Counsel  
(508) 214 0928

---

**From:** Tim Collins <[TCollins@truro-ma.gov](mailto:TCollins@truro-ma.gov)>  
**Sent:** Wednesday, February 7, 2024 4:23 PM  
**To:** Barbara Carboni <[bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov)>  
**Subject:** RE: 9B Benson Road

Barbara,  
After conducting a walk of the proposed site with both you and Chief Calise if the project complies with Policy # 28 (which includes a grade requirement), Truro General By laws 1-9-13 (public safety clearing) and Massachusetts 527-cmr-1 chapter 18, I would not have issue with this project. Should there be any additional questions please do not hesitate to contact me.

**Respectfully,**

**Timothy Collins**  
**Fire Chief/EMD**  
**Truro Fire Department**  
**508-487-6589**  
[TCollins@Truro-Ma.gov](mailto:TCollins@Truro-Ma.gov)



Confidentiality Notice: This fax/e-mail transmission, with accompanying records, is intended only for the use of the individual or entity to which it is addressed and may contain confidential and/or privileged information belonging to the sender, including individually identifiable health information subject to the privacy and security provisions of HIPAA. This information may be protected by pertinent privilege(s), e.g., attorney-client, doctor-patient, HIPAA etc., which will be enforced to the fullest extent of the law. If you are not the intended recipient, you are hereby notified that any examination, analysis, disclosure, copying,

dissemination, distribution, sharing, or use of the information in this transmission is strictly prohibited. If you have received this message and associated documents in error, please notify the sender immediately for instructions. If this message was received by e-mail, please delete the original message and destroy any hard copies you may have created. The sender does not accept any liability for any errors or omissions in the contents of this message that arise as a result of email transmission. Thank you.

---

**From:** Barbara Carboni <bcarboni@truro-ma.gov>  
**Sent:** Wednesday, February 7, 2024 4:02 PM  
**To:** Jamie Calise <JCalise@truro-ma.gov>; Elizabeth Sturdy <ESturdy@truro-ma.gov>  
**Cc:** Tim Collins <TCollins@truro-ma.gov>  
**Subject:** RE: 9B Benson Road

Thank you

Barbara Carboni AICP  
Truro Town Planner and Land Use Counsel  
(508) 214 0928

---

**From:** Jamie Calise <[JCalise@truro-ma.gov](mailto:JCalise@truro-ma.gov)>  
**Sent:** Wednesday, February 7, 2024 3:53 PM  
**To:** Barbara Carboni <[bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov)>; Elizabeth Sturdy <[ESturdy@truro-ma.gov](mailto:ESturdy@truro-ma.gov)>  
**Cc:** Tim Collins <[TCollins@truro-ma.gov](mailto:TCollins@truro-ma.gov)>  
**Subject:** 9B Benson Road

Good afternoon, Barbara,

Following our visit to the above property, I have the following comments/recommendations:

- The proposed plan provides for a general grade that is within the local rule limits. However, there are some areas of the topography that seem comparatively steep. I would suggest that development/work in the area take into consideration any mechanisms available for reshaping, driveway/road course, etc.
- My overall review revealed that the general character of the site and proposed plan would allow for the access of a police vehicle should an emergency arise.

Should you need anything additional, please let me know.

Sincerely,

**Jamie M. Calise**

Chief of Police  
Truro Police Department  
344 Route 6  
Post Office Box 995  
Truro, Massachusetts 02666  
508.487.8730  
[jcalise@truro-ma.gov](mailto:jcalise@truro-ma.gov)





**Courtney A. Simmons**

P: 617.589.3832 | F: 617.523.6215  
csimmons@davismalm.com

February 6, 2024

**VIA EMAIL**

Truro Planning Board  
c/o Liz Sturdy, Planning Department Administrator  
Truro Town Hall  
24 Town Hall Road, P.O. Box 2030  
Truro, MA 02666  
esturdy@truro-ma.gov

Re: Application for Preliminary Subdivision Plan – 9B Benson Road, Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, Trustees

Dear Members of the Truro Planning Board:

As you are aware from prior correspondence, this office represents Lucy Clark, the owner of the property located at 7 Benson Road, Truro, Massachusetts. In advance of the February 7 hearing on the above-referenced matter, I submit this correspondence on behalf of Ms. Clark who continues to have serious objections to the Preliminary Subdivision Plan Application (“Subdivision Plan”) submitted by Willie J. Cater and Gloria Cater, Trustees of the Fisher Road Realty Trust (the “Applicant”), the owner of 9B Benson Road (the “Cater Property”).

The revised and supplemental materials provided by the Applicant do not address the glaring safety issues in constructing a lengthy and narrow, 573-foot long and 12-foot wide, subdivision road with a steep 14% grade. That there may be other roads in Truro that are narrower has no bearing on the Planning Board’s consideration of this application where the circumstances surrounding those roads differ from the unique circumstances here, which is all the Board is entitled to consider.

The Truro Subdivision Rules and Regulations, approved and accepted by the Planning Board, establish standards designed to ensure that roadways provide safe and adequate access not only for the residents that live off of them, but also for Truro’s police, fire and rescue personnel, and other travelers such as delivery drivers, utility and service providers. The road will also be traversed by trucks moving construction materials, fill and equipment during the construction of a building on the Cater Property. From the plans submitted, it is evident that the Applicant proposes a dangerous roadway, not designed for safe travel and convenient vehicular and emergency access as required by the Subdivision Rules and Regulations.



Truro Planning Board  
February 6, 2024  
Page 2

Moreover, the Subdivision Plan proposes alteration that is environmentally destructive, effectively an eradication of an enormous area outside of where the proposed subdivision road will be located, on land not owned by the Applicant. The 14% grade requires an extensive amount of cut and fill, extending to a 90-foot width, and clear-cuts all the mature trees and vegetation on the abutters' properties. This is an excessive amount of work and intrusion to the abutters' properties well beyond the scope of the site work contemplated by the Applicant's easement.

There will be erosion from the massive amount of razing of established trees that provide bank stabilization and increase precipitation infiltration, as well as from the steep cut through the hill required to construct the roadway. As noted by the Cape Cod Commission, the Applicant's stormwater management plan contains discrepancies. The proposed systems are not adequately designed to handle the runoff and drainage from the roadway. These are all severe land alterations to fragile areas, resulting in environmental impacts that the Applicant is unable to address. A proposed subdivision plan with this magnitude of destruction and environmental harm cannot be found to have respect for the natural landscape.

The Board recognizes that the Applicant can only gain subdivision approval if it grants the seven (7) waivers that have been requested from strict compliance with the Subdivision Rules and Regulations. Waivers should only be granted where it is in the public interest and not inconsistent with the purpose and intent of the Subdivision Control Law. Based on the foregoing, and as noted in previous submission to the Board, granting such waivers is not in the public interest and directly conflicts the purpose and intent of the Subdivision Control Law given its environmental impacts, danger in the operation of motor vehicles and safety in the case of emergencies, lack of compliance with applicable zoning, and insufficient stormwater management systems. The Board is urged to consider the several requested waivers collectively, not in isolation, and to take into account such conflicts and concerns of the abutting landowners, members of the public, and the Cape Cod Commission.

The Applicant bought the Cater Property in 1979, knowing full well that it was landlocked and that its deed contained no certain access. The Applicant chose to purchase the property without first clarifying how it could be accessed or ascertaining what relief they would require from the Town in order to build. Although the court decisions ultimately provided the Applicant with a legal right of way across the land of Ms. Clark and others, those decisions did not guarantee that the Applicant was entitled to subdivision approval for a roadway within their defined right of way, nor that they may expand their easement rights to gain subdivision approval and construct a road.

Therefore, Ms. Clark respectfully requests that the Planning Board deny the Applicant's Subdivision Plan.



Truro Planning Board  
February 6, 2024  
Page 3

Sincerely,

*/s/ Courtney Simmons*

Courtney A. Simmons

cc: Barbara Carboni (via email)  
Robin Reid (via email)  
Kate Carter (via email)  
Lucy Clark (via email)  
Christoph Marino, Esq. (via email)





**Eliza Z. Cox**  
**Daniel C. Johnston**  
Direct Line: 508-790-5431  
Fax: 617-310-9603  
E-mail: [ecox@nutter.com](mailto:ecox@nutter.com)  
[djohnston@nutter.com](mailto:djohnston@nutter.com)

February 5, 2024  
0114552-00001

**VIA EMAIL**

Town of Truro Planning Board  
c/o Town Planner Barbara Carboni  
24 Town Hall Road  
Truro, Massachusetts 02666  
Attention: Richard Roberts

Re: Preliminary Subdivision Plan – 9B Benson Road, Truro, Massachusetts

Dear Chair Roberts:

This office represents Stephen Loffredo and Helen Hershkoff, owners of the property located at 9 Benson Road, Truro, Massachusetts. We respectfully request that the Board decline to approve either version of the above-referenced Preliminary Subdivision Plan submitted by the Fisher Road Realty Trust (the “**Applicant**”). The Applicant’s revised plan does not answer the objections lodged in our earlier submissions to the Board,<sup>1</sup> and we urge the Members to consider those objections in deciding on this application.

As detailed in our prior submissions, and confirmed by the site visit on January 4, 2024, both of the Applicant’s proposed roadways would do extraordinary damage to a large expanse of environmentally fragile coastal heath that the Applicant does not own. Moreover, both subdivision plans excessively intrude into the neighbors’ property and thereby overburden the easement. The 9% grade plan cuts a swath into the landscape, opening to a width of 150 feet and razing everything in its path, including a large stand of mature pines trees. The fill on the south side of the proposed roadway would extend some 50 feet into the Loffredo/Hershkoff property, destroying large oak trees and creating a dangerous 8-foot elevated roadway. The 14% grade plan reduces the environmental destruction to a degree, but still requires a massive cut and fill extending to a 90-foot width, carves a 10-foot-deep channel into the hill, and razes all the mature trees and vegetation across over 20,000 square feet of landscape -- outside of the proposed right of way -- that the Applicant does not own. Both subdivision plans involve dramatic land alterations that cause extraordinary damage to environmentally sensitive resources. The Applicant’s easement is not a license to build a roadway no matter the extent of destruction and intrusion on the surrounding property owners.

---

<sup>1</sup> Letter to the Board from Stephen Loffredo & Helen Hershkoff dated September 6, 2023, and Letter to the Board from Daniel Johnston, Nutter, McClennen & Fish, LLP, dated November 13, 2023. [Both included in the Agenda Packet for the November 15, 2023 Board Meeting].



Richard Roberts, Chair, Truro Planning Board  
February 5, 2024  
Page 2

Additional concerns have been raised by the Cape Cod Commission (the “**Commission**”). Commission staff expressed serious reservations about Applicant’s plan for handling the severe stormwater runoff that would be generated by this roadway. The Board should follow the Commission’s recommendation that it engage a professional engineer “to conduct a peer review of the engineering designs for the proposed roadway and the stormwater designs.” This may be accomplished at no cost to the Town because Subdivision Regulation 1.7 authorizes the Board to “require that the Applicant pay a reasonable ‘project review fee’ of a sufficient sum to enable the Board to retain consultants chosen by the Board alone.”

Similarly, the Board should not accept without further inquiry the Applicant’s assurances that it can stabilize an expanse of 20,000 to 30,000 square feet that has been denuded of all vegetation and topsoil and that sits on a steep hill with steep side slopes; this is especially true in light of the increasing frequency and intensity of severe storms that climate change will continue to bring to Cape Cod. Given the sheer magnitude of the Applicant’s clearing and earthmoving on this hillside described by the Land Court as “sensitive” and in “fragile environmental condition,” and given the real prospect of severe environmental harm, the Board should obtain a thorough, expert assessment, beyond the Commission’s paper review, of whether the Applicant’s stabilization plan is viable and sustainable. Again, the Subdivision Rules and Regulations authorize the Board to engage impartial experts of its own choosing, with the cost borne by the Applicant.

It has become clear from the subdivision plans presented to the Board that the only way to construct a roadway that avoids appalling environmental destruction and excessive invasion into the neighboring properties is to substantially increase the slope so that it much more closely conforms to the natural grade of the terrain. The Applicant’s attorney stated at the January 24, 2024 hearing that roadways of 15 to 20 percent have been deemed acceptable in Truro and the 2015 subdivision plan submitted by the Applicant set the grade at 16 percent. A grade closer to the 20 percent recited by counsel would be preferable to reduce the damaging impacts that this roadway would have.

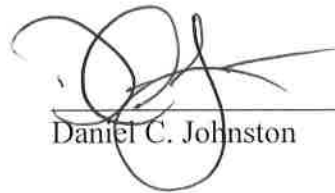
Should the Board conclude, however, that a roadway of sufficiently steep grade to avoid severe damage to this fragile landscape would be unsafe for travel, the proper course would be to deny approval to construct such a road. The Land Court judgment related to this matter settled only an issue of property rights as between private parties. It did not purport to determine any issue of land use, planning, or zoning law. Nor did it in any way restrict the authority of the Town and its boards to consider any relevant factors – including the magnitude and severity of damage to the natural environment – in determining whether or not to permit the development proposed in this application. Lastly, should the Board decide to effectuate its safety goals by imposing a shallower pitched roadway that increases the intrusion onto our clients’ land, we would argue that such action constitutes an unlawful taking of private property for a public purpose.

Richard Roberts, Chair, Truro Planning Board  
February 5, 2024  
Page 3

Thank you very much for your time and attention to this matter.

Sincerely,

  
Eliza Z. Cox (cc)

  
Daniel C. Johnston

cc: Stephen Loffredo  
Helen Hershkoff



## TOWN OF TRURO

### Planning Department

24 Town Hall Road, P.O. Box 2030, Truro, MA 02666  
Tel: (508) 349-7004, Ext. 127 Fax: (508) 349-5505

#### EXTENSION AGREEMENT FOR CASE NO. 2023-002/PB

I, Robin B. Reid, Esq., as authorized agent of Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, Trustees, with respect to property located at 9B Benson Road, agree to an extension of time through February 7, 2024 for action by the Planning Board on the above Application filed with the Town Clerk pursuant to G.L. c. 41, s. 81L.

\_\_\_\_\_  
Signature of Applicant/Agent

01/23/24  
Date

Filed with the Planning Department:

Elizabeth Sturdy 1/23/2024  
Name Date

Filed with the Town Clerk:

[Signature] 1/31/24  
Name Date

**Robin B. Reid**  
**Mediator**  
**Attorney at Law**

**Mailing address:** Post Office Box 1713  
Provincetown, Massachusetts 02657

**Telephone:** (508) 487-7445  
**E-mail:** Robin@RobinBReidEsq.com

January 29th, 2024

Elizabeth Sturdy  
Planning Department  
Town of Truro  
by hand at Truro Town Hall

**RE:** 9B Benson Road  
Fischer Road Realty Trust  
Gloria J. Cater and Willie J. Cater, trustees

**Additional Materials**

APPLICATION FOR APPROVAL OF PRELIMINARY PLAN

Dear Ms. Sturdy

I represent the Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater trustees, in the matter of an Application for Approval of a Preliminary Subdivision Plan.

This matter is scheduled for hearing before the Truro Planning Board on February 7, 2024.

Enclosed please find 12 sets of a revised Request for Waivers - corrected so that the summary includes all of the waivers listed on David Clark's Road Standards Table.

Elizabeth Sturdy, Planning Department  
Town of Truro

Re: 9B Benson Road  
page 2 of 2

---

Thank you for your consideration in this matter.  
Please do not hesitate to call if you have any questions.

Yours truly,

Robin B. Reid, Esq.

cc. Barbara Carboni, Town Planner  
Elizabeth Verde, Town Clerk  
Emily Beebe, Health & Conservation  
Gloria and Willie Cater  
Kate Carter, Dain, Torphy, Le Ray, Weist & Garner, PC  
all by email

## REQUEST FOR WAIVERS

### 9B Benson Road

Application for Approval of a Preliminary Plan

Waivers requested from the Subdivision design standards and specifications found at Appendix 2, Table 1 of the Town of Truro Rules and Regulations Governing the Subdivision of Land:

1. **Minimum Right of Way Width** - 12 feet, rather than 40 feet
2. **Minimum Roadway width**, not including berms - 12 feet, rather than 14 feet
3. **Shoulder width** - 2 feet, rather than 4 feet
4. **Maximum grade** - 14%, rather than 8%
5. **Minimum curb radius** - 15 feet, rather than 20 feet

Waivers requested from the Subdivision road construction specifications found at §§ 4.1.6 and 4.1.8 of the Town of Truro Rules and Regulations Governing the Subdivision of Land:

1. **4.1.6 Grade** - no crown, rather than a 1/4 inch of pitch per foot from center line
2. **4.1.8 Berms** - 1 berm, rather than 2

DESIGN ELEMENTS	Table 1	Hopper's View Lane	Access ROW
<b>Roadway Layout</b>			
Minimum right-of way width	40 Ft.	40 Ft.	12 Ft.*
Minimum Roadway width- not including berms	14 Ft.	14 Ft.	12 Ft.*
Shoulder width	4 Ft.	4 Ft.	2 Ft.*
<b>Horizontal Alignment</b>			
Minimum radius at street centerline	125 Ft.	N/A	N/A
<b>Vertical Alignment</b>			
Clear sight distance	200 Ft.	200 Ft.	200 Ft. +
Minimum vertical curve	100 Ft.	250 Ft.	100 Ft.
<b>Grade</b>			
Maximum grade	8.00%	4.50%	14 %*
Minimum grade	1.00%	1.75%	2%
Maximum grade, within 30' from intersection	2%	N/A	2%
<b>Intersection Standards</b>			
Minimum intersection angle	60°	180°	66 ° - 32 1/2 °
Minimum centerline offset	125 Ft.	N/A	200 Ft.+
Minimum curb radius	20 Ft.	25 Ft.	15 Ft.*
<b>Dead-end Street</b>			
Maximum length	1000 Ft.	123 Ft. (653 Ft. total)	573 Ft.
Minimum radius of circular turnaround	40 Ft.	40 Ft.	N/A
<b>Pavement and Storm Frequency Standards</b>			
Unpaved	6"/3"	N/A	6"
Pavement, compacted thickness	3 In. total	4 In. total	N/A
Base, compacted thickness	8 In. total	8 In. total	8 In. total
Storm frequency for drainage calculations	50 Yr.	50 Yr.	50 Yr.
Storm frequency for cross culverts sizing	50 Yr.	50 Yr.	50 yr.
<b>Section 4.1.6 Grade</b>			
Roadway is to be constructed ... with a crown of 1/4" / ft.		Crowned	No Crown*
<b>4.1.8 Berms</b>			
Berms shall be provided on both sides of all paved roads		2 Berms	1 Berm*
<b>* Waiver Required</b>			