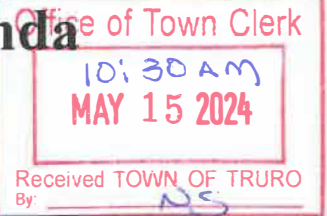




# Truro Zoning Board of Appeals Agenda

**Remote Zoom Meeting**  
**Monday, May 20, 2024 – 5:30 pm**

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



**Join the meeting from your computer, tablet or smartphone:**

**<https://us02web.zoom.us/j/82549758103>**

**Dial in: +1-646-931-3860**

**Meeting ID: 825 4975 8103      Passcode: 467697**

## **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/livestream.

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/livestream, 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 comment via postal mail or by emailing Liz Sturdy, Planning Department Assistant, at [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov), one week prior to the meeting; or may instead speak during the Public Comment portion of the hearing.

## **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.

## **Minutes**

- ◆ February 26, 2024
- ◆ March 25, 2024

## **Public Hearing – Continued**

**2024-002/ZBA – Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee), for property located at 491 Shore Road (Atlas Map 7, Parcel 4, Registry of Deeds Book 8309 and Page 131). Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming use/structure in the Beach Point Limited Business District. [Original material in 2/26/2022 packet] {New material included in this packet – Additional Conditions}**

**2022-017/ZBA (VAR/SP) – Ebb Tide on the Bay Condominiums** for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District. [Original material in 9/26/2022, 10/24/2022, 2/27/2023, 5/22/2023, 10/23/2023, 11/20/2023, and 2/26/2024 packets] {New material included in this packet}

**Board Discussion**

- ◆ Hybrid Meetings
- ◆ Upcoming Appointments/Reappointments

**Next Meetings** Monday, June 24, 2024 at 5:30 p.m.

**Adjourn**



**STAFF MEMORANDUM**

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To: Truro Zoning Board of Appeals  
From: Barbara Carboni, Town Planner and Land Use Counsel  
Date: May 16, 2024  
Re: Meeting May 20, 2024

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**2024-002/ZBA Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee) for property located at 491 Shore Road.** Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming structure in Beach Point Limited Business District.

*At its February 26, 2024 meeting, the Board voted to grant a special permit allowing the relief requested, with certain conditions. Subsequently, counsel for the applicant and for Crow's Nest Condominiums contacted me and requested that the Board consider certain additional conditions the parties could agree upon, with the mutual intent of avoiding litigation. I advised that this would require reopening the public hearing as the Board would be deliberating on the new conditions.*

*At the Board's March 25, 2024 meeting, the Board voted to reopen the hearing. Notice was republished. Counsel for the applicant and Crow's Nest jointly submitted additional conditions through proposed edits to the draft decision. The draft decision with proposed edits (in blue) is attached for the Board's consideration.*

*The proposed conditions are within the Board's legal authority to include in the decision, as they go to mitigation of potential impacts of the project allowed by the special permit on neighboring properties. However, whether to include any of them is entirely within the Board's discretion.*

**2022-017/ZBA (VAR/SP) Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Map 7, Parcel 7).** Applicant seeks a special permit for reconstruction of three nonconforming structures on property in Beach Point Limited Business District.

*The special permit remains pending pursuant to a continuance granted by the Board at its last meeting. Amended plans for Buildings 1 and 2 had been submitted for the February 26, 2024 meeting; here is the link to ZBA packets: <https://www.truro-ma.gov/node/2331/agenda/2024>*

*Click on February 26<sup>th</sup> packet and start on p. 28.*

*At the last meeting, applicant's counsel agreed to provide:*

1) parking plan/protocol. Applicant's counsel subsequently noted that a parking plan had been submitted prior to the Board's vote granting the variance. Counsel resubmitted that plan; it is attached. Parking detail located in lower left.

2) 3D renderings of the structures. These are in the meeting packet.

The following discussion is adapted from earlier memos.

### Existing Conditions

**Building 1** is single story, contains one unit and has a nonconforming setback of 7.16 feet from the eastern (side) lot line. **Building 2** is single story and contains one unit. **Building 3** is two stories, contains four units and has a nonconforming setback of 1.91 feet from the western (side) lot line. See Existing Site Plan SE.1. In this portion of the District, the minimum side yard setback is 5 feet per story. The front setback of Building 1 is 22.24 feet (nonconforming); of Building 2 is 37.6 feet; and Building 3 is 40.06 feet.

**Building 1** is proposed to increase from 1 to 1 ½ stories. *In the original proposal*, the increase in Gross Floor Area was from 883 square feet to 1681 square feet.<sup>1</sup> *In the revised (February 26<sup>th</sup> meeting) proposal*, the Gross Floor Area is increased to 1568 square feet. That is, the proposed Gross Floor Area of Building 1 has been reduced from the original proposal by 113 square feet.

The height of Building 1 will increase from 16.76 feet to 29 feet 10.49 inches.<sup>2</sup> The side yard setback will be increased from 7.16 feet to 8 feet. Although an increase, this will create a new nonconformity. Because the building is increasing to 1 1/2 stories, the side yard setback requirement will increase as well. The Bylaw requires "five (5) feet per story" (see n. 4 to Table 50.1), but does not specify the required setback per half-story. The Building Commissioner has indicated that the required setback for 1-1/2 stories is 7.5 feet.<sup>3</sup> The front yard setback will increase from 22.24 feet to a conforming 25 feet.

**Building 2** is proposed to increase from 1 to 1 ½ stories. *In the original proposal*, the increase in Gross Floor Area was from 578 square feet to 1040 square feet. *In the revised (February 26<sup>th</sup> meeting) proposal*, the Gross Floor Area is increased to 967.42 square feet. That is, the proposed Gross Floor Area of Building 1 has been reduced from the original proposal by 72.58 square feet.

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<sup>1</sup> The revised plans for Building 1 incorrectly identify 1631.25 square feet as the "Existing Floor Area." The existing floor area is 883 square feet; the original *proposal* was 1631 square feet.

<sup>2</sup> The three structures must be elevated to meet requirements for building in the Flood Zone; see peak heights in tables on SP-2. Based on the average grade for each, it appears that the structures will not exceed the 30-foot height limit.

<sup>3</sup> The Building Commissioner had previously indicated that 10 feet would be required for the 1 - 1/2 story building, but subsequently advised that 7.5 feet would be the applicable setback in this case.

The height of Building 2 will increase from 13 feet to 29 feet. The front setback will be reduced but to a conforming 25 feet.

**Building 3** is proposed to remain a 2-story structure, decreasing in Gross Floor Area from 2016 square feet to 1917 square feet. The side yard setback will be increased from 1.91 feet to 3.3 feet, slightly more conforming to the 10 feet required. The front setback will be reduced but to a conforming 25 feet. The height of **Building 3** will increase from 24.23 feet to 29.95 feet. *There are no changes to the plans for Building 3.*

Other increased nonconformity: The distance between proposed Building 2 and Building 3 appears to be 8 feet. See Addendum to Site Plan, AD-1 (indicating 8 foot wide easement running between buildings and to the shore). This is narrower than the existing configuration. See 1986 Plan of Land (in recent submission) The distance between Buildings 1 and 2 appears to be approximately 2 or 3 feet at its narrowest, where covered porches and stairs on the buildings meet a narrow boardwalk. This is also narrower than the existing configuration. Both the existing and proposed configurations are nonconforming with a Bylaw requirement of 30 feet between "units in cottage colonies or motor courts" (see Bylaw s. 50.1.D); the new configuration is more nonconforming.

Standard for Special Permit under G.L. c. 40A, s. 6 and Section 30.7 of the Zoning Bylaw

The lot is nonconforming as to area and frontage; the structures are nonconforming as they are within side setbacks. Alteration, extension, or reconstruction of a dwelling on a nonconforming lot increases the intensity of the existing nonconformity and requires a special permit under G.L. c. 40A, s. 6. Bjorklund v. Zoning Board of Appeals of Norwell, 450 Mass. 357 (2008).

The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed alternation and reconstruction “shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood.”

Likewise, the Board may grant a special permit under Section 30.7.A if it finds that: “the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw.”

In this case, the structures as proposed – all three elevated and two closer to Shore Road – will have a different impact on the streetscape and neighboring properties than the existing configuration. This and other considerations are entrusted to the Board’s judgment, based on its “intimate understanding of the immediate circumstances [and] of local conditions . . . .” Fitzsimonds v. Board of Appeals of Chatham, 21 Mass.App.Ct. 53, 55 (1985).



# Zoning Board of Appeals

Town of Truro

24 Town Hall Road

Truro, MA 02666

(508) 349-7004

## DECISION OF THE ZONING BOARD OF APPEALS

### Special Permits

Case Reference No.: 2024-002/ZBA

Atlas Map 7, Parcel 4

Address: 491 Shore Road

Title Reference: Barnstable County Registry of Deeds Book 8309, Page 131

Applicant: Jennifer Cabral

Owners: Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee

Hearing Date: February 26, 2024

Decision Date: February 26, 2024

- (1) Finding that the proposed use is permitted as by-right under §50.1.A, note 1, of the zoning bylaw; and the proposed use is allowed as an accessory use on the property absent a principal use pursuant to §50.1.A; for property in the Beach Point Limited Business District:

Vote:

5-0

- (2) Motion to grant a Special Permit under M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw for alteration and reconstruction of the pre-existing nonconforming structure in the Beach Point Limited business district, including conditions as set forth by the Board, and that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing and conforming use structure, and that the alteration or extension will exist in harmony with the general purpose and intent of this bylaw; for property in the Beach Point Limited Business District:

Vote:

5-0

- (3) Motion to allow withdrawal, without prejudice, the application for a Special Use Permit under M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw.

Vote:

5-0

Sitting: Chris Lucy, Chair; Darrell Shedd, Vice Chair; Art Hultin; Nancy Medoff; Dave Crocker

Following duly posted and noticed Truro Zoning Board of Appeals hearing held on February 26, 2024, the Board voted to grant a Special Permit.

The following submitted materials were considered by the Board:

- Cover Letter and Memorandum from Benjamin E. Zehnder, Esq. dated January 26, 2024
- Application for Hearing dated January 26, 2024
- Certified Abutters List
- “Existing Site Plan, Proposed Workshop, Nearen and Cubberly Nominee Trust, Christopher J. Snow, Trustee, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1” = 20’, Sheet Ex.0
- “Existing North & South Elevations, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.1
- “Existing West Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.2
- “Existing East Elevation & Floor Plan, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.3
- “Proposed Site Plan, Proposed Workshop, Nearen and Cubberly Nominee Trust, Christopher J. Snow, Trustee, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022 and Revised July 27, 2022, Scale 1” = 20’, Sheet A.0
- “Proposed North & South Elevations, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.1
- “Proposed East Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.2
- “Proposed West Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.3
- “First & Loft Floor Plans, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022 and Revised July 27, 2022, Scale 1/4” = 1’-0”, Sheet A.4
- “Foundation & Framing Plans, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.5
- Town of Truro – Fiscal Year 2024 491 Shore Road Property Card
- MapsOnline – Truro, MA for 491 Shore Road dated December 14, 2023
- “Plan of Land Located in Truro – Mass, a portion of which is shown on Land Court Plan 32258A for Crow’s Nest, Inc., Book 347 Page 95” prepared by Cape & Islands Surveying, dated October 3, 1980, Scale 1” = 20’

- “Plan of Land Located in Truro – Mass, a portion of which is shown on Land Court Plan 32258A for Crow’s Nest, Inc., Barnstable County Registry of Deeds Book 347 Page 95” prepared by Cape & Islands Surveying, dated October 3, 1980, Scale 1” = 20’
- Barnstable County Registry of Deeds Book 33 Page 127 F1
- Plan Ex.0
- Cape Cod Chronology Viewer – Cape Cod Commission, Layer List, 1952 and 1971
- Photographs (2) dated 02/09/2021
- Jennifer Cabral, Applicant Project Description Statement – 491 Shore Road, Map 7, Parcel 4, North Truro, MA
- Town of Truro Conservation Commission Minutes for August 1, 2022
- Affidavit of Janice Nearen-Bell (4 pages)
- Overhead Door Company of Cape Cod Phone Quotation dated August 24, 1999
- Affidavit of Christopher J. Snow (2 pages)
- Town of Truro Real Estate Paid Tax Statement 2002-2024 (2 pages)
- Town of Truro Planning Board Building Permit No. 143 dated November 6, 1958
- Town of Truro Application for Permit dated November 6, 1958
- Town of Truro Building Permit No. dated April 1
- Town of Truro Building Permit No. 541 dated April 1, 1964
- Town of Truro Building Permit No. 629 dated September 25, 1964
- Letter to Truro Planning Board from Albert Annone dated September 30, 1964
- Letter from S. Osborn Ball, Esq. re: Annone and removal of cottages dated September 29, 1964
- Town of Truro Application for Building Permit [blank]
- Town of Truro Application for Building Permit dated October 15, 1968 [notation BEZ overwrite 12/15/23]

**SUPPLEMENTAL:**

The Board also received:

- Email dated February 5, 2024 from Truro Building Commissioner
- Letters/emails in opposition:
  - Christopher R. Agostino, Esq.
  - Amy L. Reed Covais, Esq.
  - Donna Fay and Sharon Santangelo
  - James McCusker
  - Jeffrey and Pamela Wade
  - Len Dubois
  - Matthew McCaffrey
  - Robert and Michele Vannelli
  - Stephen McHugh
  - Therese Featherstone



- William Bibeau and Anthony Ferreira

This Special Permit Decision is based on the following findings of fact:

1. The lot at 491 Shore Road lies between Route 6 and Shore Road; it is 20,038 square feet in area and has 200.01 feet of frontage (conforming).
2. A garage is located 14.85 feet from Shore Road (nonconforming); it is roughly 20'3" by 26'31", 1-½ stories, with a gable roof and building height of 13.95 feet (peak elevation 24.24 feet - 10.29 feet elevation at ground level). The property is otherwise unimproved.
3. The applicant proposes to demolish the existing structure and construct a wood workshop in the same location. The proposed structure is roughly 20' by 26' and a building height of 20.8 feet (peak elevation of 31.09' – 10.29 feet elevation at ground level). Above the first story is a gable roof with dormers on each side. The first floor of the structure is identified as the wood workshop; there is a "storage loft" above and an area open to the first floor.

#### Issues of Use

4. The applicant states that the wood workshop is a "Working Studio" as that term is defined in the Bylaw:

"A working studio shall consist of a room(s) in a building detached from the principal residence, which is incidental and accessory to the principal residence whose use is primarily for work. A working studio may include a toilet and work-related sinks, but shall not include a shower or bathtub or residential kitchen facilities or sleeping accommodations."

Bylaw section 10.4 (Definitions).

5. A working studio is a use permitted in the Beach Point District in the Use Table. See Bylaw section 30.2. The physical characteristic and function of the proposed structure meet this definition, but a threshold question must be answered first: where there is no "principal residence" on the lot as contemplated by the definition, can the proposed woodworking shop be considered to fall within this definition? A related question is whether an accessory use is permitted on a lot in the absence of a principal use.
6. The Bylaw definition of "Accessory Use" defines such as use as "[a] use incidental and subordinate to the principal use or building and located on the same lot with such principal use or building." This definition implies that an accessory use must be tethered to a principle use on the same lot.

7. However, the Town's Zoning Bylaw expressly allows "buildings for accessory use" on lots nonconforming as to area and/or setback. See Section 50.1.A, Note 1 (excepting "buildings for accessory use and cottage" from minimum lot size and frontage requirements). Accessory structures and uses on small lots have historically existed in Truro; this development pattern is particularly common on Beach Point. The inclusion of an exception from minimum lot size for "buildings for accessory use" appears to be a recognition of this historic development pattern. The Board finds that this specific provision allowing "buildings for accessory use" on undersized lots controls over the more general Bylaw definition of the term "accessory use."
8. The Board finds that the proposed wood workshop is a "Working Studio" under the Zoning Bylaw and this accessory use is permitted on the lot (without a principle use) pursuant to Note 1 to the Table at 50.1.A

Special Permit under G.L. c. 40A, s.6 and Zoning Bylaw §30.7 and §30.8 (alteration, extension or reconstruction of nonconforming structure/lot)

9. The lot is conforming as to lot frontage (200 feet where 150 required) and, pursuant to Note 1, excepted from the minimum lot area requirement. The existing structure is nonconforming, being located within the 25-foot required front setback.
10. The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed alternation and reconstruction "shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood."
11. Likewise, the Board may grant a special permit under Section 30.7.A if it finds that:  
"the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw."
12. In this case, the proposed structure will have the same footprint the existing structure, and a similar form. Although there will be an increase in the height, at 20.8 feet in height, the proposed structure remains well under the maximum building height of 30 feet. In dimensions and materials, the proposed structure is consistent with structures on neighboring properties.
13. Based on the above, the Board finds under G.L. c. 40A, s. 6 that that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
14. Likewise, the Board finds under Section 30.7 of the Zoning Bylaw that the proposed new dwelling will not be substantially more detrimental to the neighborhood than the existing

nonconforming dwelling, and that the new dwelling will exist in harmony with the general purpose and intent of the Zoning Bylaw.

### Conditions

This Special Permit is granted subject to the following conditions:

1. The use of the Property shall be in strict conformance with the Town of Truro Zoning Bylaw.
2. Applicant shall obtain all necessary approvals from the Conservation Commission and shall comply with all conditions therein. There shall be no additional plantings except as have been or may be approved by the Conservation Commission with notice to abutters.
3. All lighting on the property shall conform to Truro General Bylaw Chapter IV Section 6, Outdoor Lighting, and no lighting on the property shall impact neighboring property or the night sky.
4. All construction on the property, including materials, shall conform to the plans referenced herein.
5. There shall be no further increase in the size or gross floor area of the structure.
6. There shall be no modification or conversion of the structure for use or purpose of habitation.
7. Use of the property shall be limited to noncommercial use. Commercial uses, including retail sales and show of product (i.e., gallery-type use), are prohibited.
8. Operation of machinery shall be limited to the interior of the structure with windows closed.
9. Use of noise-generating machinery is limited to the hours of 9:00 am to 7:00 pm per the Town's Noise Bylaw.
10. All parking shall be contained within the designated area on the site plan.
11. No sanitary facilities are permitted on the property (including port-a-potties).
12. No bulk storage of flammable or hazardous materials is permitted on the property.
13. No storage of unregistered vehicles is permitted on property.
14. There shall be no dumpsters on the property other than during demolition and construction of the structure.
- ~~13-15.~~ No materials shall be stored outside the structure in areas visible to public.

~~13.16.~~ No burning of materials is permitted on the property.

~~13.17.~~ Adequate fire extinguishers shall be maintained at all times on the property. The Fire Department shall review and approve the building permit application to ensure that the structure and proposed use comply with all fire and safety regulations.

18. The Applicant shall utilize a sawdust collection system at all reasonable times.

19. The Applicant shall not use the Crow's Nest parking lot or beach area – however this condition is not intended to vary or modify any record or other property rights.

~~13.20.~~ Prior to issuance of a Certificate of Occupancy for the new structure, applicant shall submit to the Building Commissioner complete, stamped As-Built Plans for that structure confirming that the dimensions of the dwelling conform to this Decision. No Certificate of Occupancy shall issue until the Building Commissioner finds that the structure as built conforms to the requirements of this Decision.

This Special Permit shall lapse after one year if substantial use is not commenced within that time. See Zoning Bylaw §30.8.

\_\_\_\_\_  
Chris Lucy, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received, Office of the Town Clerk:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I hereby certify that this decision was filed with the Office of the Town Clerk on \_\_\_\_\_ and 20 (twenty) days have elapsed since the date of filing, and:

No Appeal has been filed.

An Appeal has been filed and received in this office on: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, §17)

**THE COPY OF THIS DECISION PROVIDED BY THE TOWN CLERK MUST BE FILED WITH THE REGISTER OF DEEDS OF BARNSTABLE COUNTY BY THE APPLICANT.**

DRAFT

AS0665029 MAP 1, PARCEL 7 & 102200  
 Zone A-1a - Process

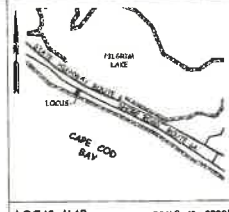
- The Property lies within Beach Front Limited Building Zone
- No. of Proposed Principal Buildings: 2 / No. of Proposed Accessory Buildings: 2  
 \* to replace the 3 Existing Buildings currently on Lot.
- Lot Coverage (Per Section 10(4) - Definition, Town Zoning Bylaws): 22.2%  
 Buildings - total = 2204 s.f. (Bldg 1 = 1022 s.f. / Bldg 2 = 710 s.f. / Bldg 3 = 1152 s.f.)  
 Decks (Including Covered Porches) - total = 1150 s.f.  
 Wood Boardwalk = 104 s.f. Note: Lot Area = 12,224 s.f.
- Gross Floor Area (Per Section 10(4) - Definition)  
 Building 1 = 1681 s.f. @ 1<sup>st</sup> Floor - 661 s.f. @ 2<sup>nd</sup> Floor  
 Building 2 = 1022 s.f. @ 1<sup>st</sup> Floor - 332 s.f. @ 2<sup>nd</sup> Floor  
 Building 3 = 1271 s.f. @ 1<sup>st</sup> Floor - 420 s.f. @ 2<sup>nd</sup> Floor
- Mean Ground Level (Per Section 10(4) - Definition) - (Datum = 1988 M.H.V.D.)  
 Building 1 = EL. 10.92' / Building 2 = EL. 10.82' / Building 3 = EL. 10.82'
- Building Height/Number (Per Section 10(4) - Definition)  
 Building 1 = 22.0' - 1 Story / Building 2 = 22.0' - 1 Story / Building 3 = 22.25' - 2 Story
- Building Setbacks:  
 Frontyard (25 ft. Required) - Building 1 = 25.0' / Building 2 = 25.0' / Building 3 = 25.0'  
 Sideyard (3 ft. Astory Required) - Building 1 @ NE corner = 8.0' / @ SE corner = 8.0'  
 Building 2 distance to Building 1 = 8.0' (194' Req'd) - distance to Building 3 = 8.0'  
 Building 3 @ NW corner = 8.0' / @ SW corner = 8.0'

**ZONING NOTES (CONTINUED)**

- Bedrooms: Building 1 = 3 / Building 2 = 2 / Building 3 = 6 - Total = 11 Bedrooms  
 \* Unit 3 = 2 BR / Unit 4 = 1 BR / Unit 5 = 2 BR / Unit 6 = 1 BR
- Parking Spaces (2 spaces per Unit Required) = 22 Spaces  
 \* Building 1 (Unit 1) = 2 / Building 2 (Unit 2) = 2 / Building 3 = 4 (Unit 3 = 1 - Unit 4 = 1 - Unit 5 = 1 - Unit 6 = 1)

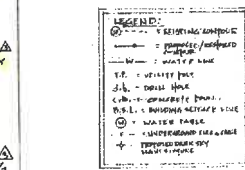
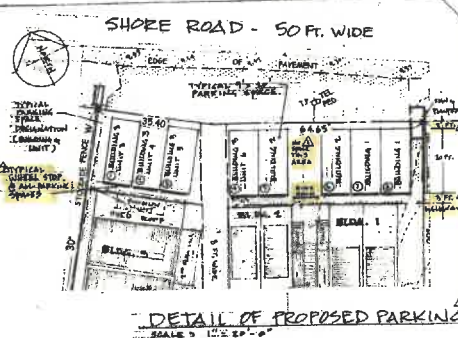
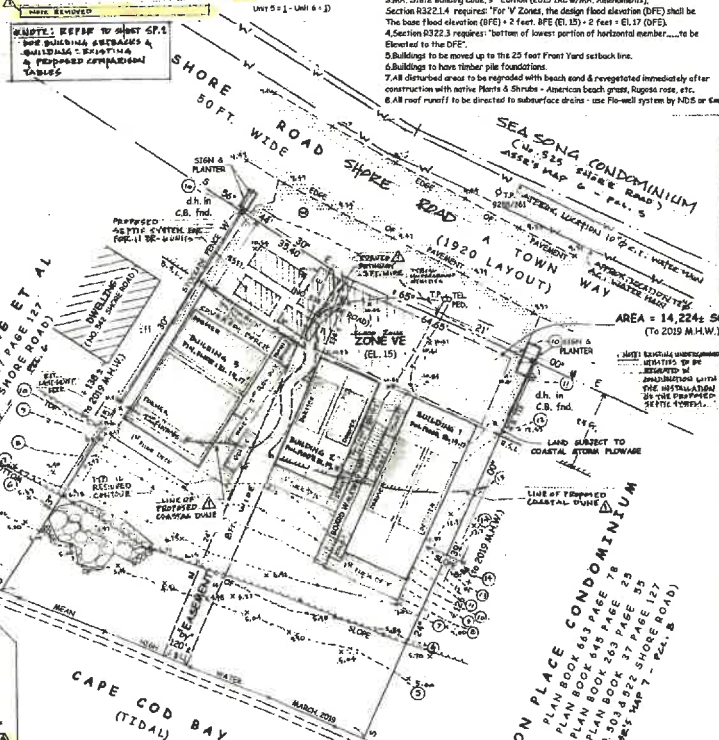
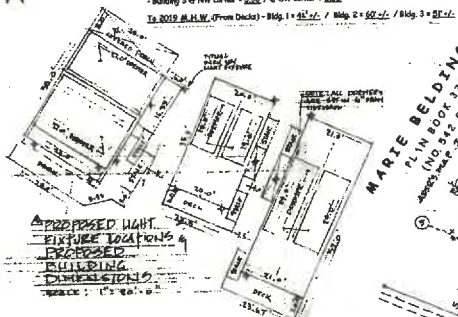
**GENERAL NOTES**

- Datum = 1988 M.H.V.D.
- Buildings 1, 2 & 3 to be raised in accordance with MA State Building Code, 9<sup>th</sup> Edition (2015 IRC & IBC w/ MA Amendments), 2018 AWC Prescriptive Residential Wood Deck Construction Code, 2019 IECC, FEMA Technical Bulletin 346 - Protecting Building Utilities From Flood Damage & FEMA Technical Bulletin 449 - Home Builder's Guide to Coastal Construction.
- MA State Building Code, 9<sup>th</sup> Edition (2015 IRC w/ MA Amendments), Section R322.1.4 requires: "For V Zones, the design flood elevation (DFE) shall be the base flood elevation (BFE) + 2 feet. BFE (EL. 15) = 2 feet + EL. 17 (DFE)."
- Section R322.3 requires: "bottom of lowest portion of horizontal member... to be elevated to the DFE."
- Buildings to be raised up to the 25 feet Front Yard setback line.
- Buildings to have timber pile foundations.
- All disturbed areas to be regraded with beach sand & revegetated immediately after construction with native Plants & Shrubs - American beach grass, Ruggies rose, etc.
- All roof runoff to be directed to subsurface drain - use flow-well system by ADS or Emax.



- NOTE: ALL PROPOSED PLANTING TO BE NATIVE PLANTS, GRASSES & SHRUBS.
- NOTE: EXISTING AND PROPOSED USE - RESIDENTIAL.
- NOTE: ALL EXTERIOR LIGHTING TO BE DARK SKY COMPLIANT.
- NOTE: ALL ROOF RUNOFF TO BE DIRECTED TO SUBSURFACE DRAINAGE STRUCTURES (FLOW-WELL SYSTEMS, OR EQUAL).
- NOTE: FLOOD ZONES AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 2500020173 FOR THE TOWN OF TRURO COMMUNITY NO. 23522 DATED JULY 16, 2014.
- NOTE: THIS PROPERTY IS COVERED BY UNDERGROUND ELECTRIC SERVICE.
- NOTE: x M.S. DENOTES SPOT ELEVATION.
- NOTE: ALL BUILDING OFFSETS ARE MEASURED PERPENDICULAR TO THE PROPERTY LINES.
- NOTE: DATUM = 1988 M.H.V.D.

PLAN BOOK 431 PAGE 93



NOTE: LIMIT OF WORK AND THE EXISTING WORK PERFORMED IS AS SHOWN BY THE DOTTED LINE AND TO BE MAINTAINED AS SUCH. THE CONTRACTOR SHALL MAINTAIN SAID LIMIT OF WORK THROUGHOUT CONSTRUCTION.



SCALE OF 1 IN. = 20 FT.  
 RECEIVED: APRIL 11, 2024  
 PROPOSED  
 SITE PLAN OF LAND IN (NORTH) TRURO AS PREPARED FOR EBB TIDE ON THE BAY CONDOMINIUM (NO. 538 SHORE ROAD)  
 SCALE: 1 IN. = 20 FT. SEPTEMBER, 2020  
 WILLIAM N. ROGERS SP.1 PROFESSIONAL CIVIL ENGINEERS & LAND SURVEYORS  
 41 OFF CEMETERY ROAD, PROVINGTOWN, MASS 01867-1565 / 508.487.5809 FAX



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

February 26, 2024 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker; Art Hultin; Nancy Medoff; Joe McKinnon (Alt.); Russ Braun (Alt.)

### **Members Absent:**

**Other Participants:** Barbara Carboni – Town Planner/Land Use Counsel; Bob Weinstein – Select Board Liaison; Christopher J. Snow (Attorney and Applicant); Ben Zehnder (Attorney for Abutters – Marie Belding and Pat Callinan); Marie Belding (Abutter); Pat Callinan (Abutter); William Rogers (Engineer/Surveyor for Christopher Snow – Applicant); William Henchy (Attorney for Robert J. Martin II – Applicant); Andrew Aiken (Owner/Manager of 100 Route 6 LLC); Jennifer Cabral (Applicant); Ben Zehnder (Attorney for Jennifer Cabral – Applicant); Christopher Agostino (Attorney for Crow’s Nest Condominium Trust – Abutters); William Rogers (Engineer/Surveyor for Jennifer Cabral – Applicant); Lauren McKean (Park Planner for the National Park Service); Jim McCusker (Multiple Unit Owner at Crow’s Condominium Trust); Lenny Dubois – Owner at Crow’s Nest Condominium Trust)

Remote meeting convened at 5:30 pm, Monday, February 26, 2024, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

### **Public Comment Period**

Chair Lucy invited the members of the public to offer public comments and there were none.

Chair Lucy then moved the discussion on the next Agenda item, the Minutes, to later in the meeting due to the number of hearings and there were no objections.

### **Public Hearing (Continued)**

**2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums** for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2 and §30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy recognized Attorney Snow who provided background information regarding this proposal and introduced the Applicant’s representatives present at the meeting. Attorney Snow provided an update

to address the concerns expressed by the Members regarding the application at the previous meeting. Attorney Snow concluded with the benefits of the project and requested approval of the application.

Chair Lucy then invited the Members to comment on Attorney Snow's presentation and the Applicant's updated proposal. A discussion then ensued among the Members and Attorney Snow with input from Town Planner/Land Use Counsel Carboni on the following topics: the adverse impact of pile driving to the neighborhood, the setbacks, the increased living space in the units and the decreased number of parking spaces, the reconstruction as proposed is closer to the road, and the potential inclusion of 3-D projections in future applications to provide better visualization for the Members and the public regarding any projects.

Attorney Snow then proposed a continuance if that was agreeable to the Members and the Town Planner/Land Use Counsel Carboni. There were no objections and Attorney Snow will email Town Planner/Land Use Carboni the written and requested continuance to April 29, 2024 by tomorrow morning. The additional time will provide the Applicant to present an updated parking plan and address other issues raised by the Members during this meeting.

Chair Lucy then recognized the following members of the public who commented on this matter: Ms. Belding, Ms. Callinan, and Mr. Rogers.

**Vice Chair Shedd made a motion to continue 2022-017/ZBA (VAR/SP) until April 29, 2024.**

**Member Medoff seconded the motion.**

**ROLL CALL VOTE:**

**Vice Chair Shedd – Aye**

**Member Medoff – Aye**

**Member Hultin – Aye**

**Member Crocker - Aye**

**Chair Lucy – Aye**

**Member Braun – Aye**

**Member McKinnon – Aye**

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

### **Public Hearings (New)**

**2023-012/ZBA Robert J. Martin II and 100 Route 6 LLC** for property located at 100 Route 6 (Atlas Map 55, Parcel 12). Applicant appeals a Cease-and-Desist Order issued by Building Commissioner on November 29, 2023, with respect to property located in the Seashore District.

Chair Lucy recognized Attorney Henchy who provided background information and an update on this matter. Attorney Henchy requested that the Planning Board reverse its decision on the Cease-and-Desist Order that required a cleanup of the site as the Applicant has complied. Town Planner/Land Use Counsel Carboni opined that there should be no discussion on constructive grant as it is currently under appeal.

After a discussion among the Members, Attorney Henchy, and Town Planner/Land Use Counsel Carboni, Chair Lucy and the Members discussed potential motions regarding this matter. Attorney Henchy stated his objection to a proposed motion citing case law and Town Planner/Land Use Counsel Carboni opined that the Members do not have to consider Attorney Henchy's opposition to the proposed motion as the matter for which Attorney Henchy cited was still being litigated.



A further discussion ensued regarding the Building Commissioner's Cease-and-Desist Order (including Attorney Henchy's position regarding the legality of the order) and the actions which the Applicant took to clean up the site.

Chair Lucy recognized the following individual of the public who commented on this matter: Ms. McKean. There were no other members of the public who commented on this matter.

Chair Lucy then announced that the Members would vote on a motion to uphold the Building Commissioner's decision to issue a Cease-and-Desist Order issued on November 29, 2023 and to incorporate the record of the appeal **#2023-006/ZBA** and to incorporate the contents of that record into the record of this appeal. Town Planner/Land Use Counsel Carboni recommended that this motion be voted upon prior to a motion regarding the Building Commissioner's decision to issue a Cease-and-Desist Order on November 29, 2023.

**Chair Lucy made a motion to incorporate the record and the findings for the matter #2023-006/ZBA. Vice Chair Shedd seconded the motion.**

**ROLL CALL VOTE:** *Prior to the vote, Chair Lucy announced that only the five full Members would vote.*

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Member Medoff - Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

**Vice Chair Shedd made a motion, regarding the matter of #2023-012, to uphold the decision made by the Building Commissioner to issue a Cease-and-Desist Order on November 29, 2023.**

**Member Hultin seconded the motion.**

**ROLL CALL VOTE:** *Prior to the vote, Chair Lucy announced that only the five full Members would vote.*

**Member Medoff - Aye**

**Member Hultin – Aye**

**Member Crocker – Aye**

**Vice Chair Shedd - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

After the vote, Attorney Henchy requested that the minutes reflect that the Members were satisfied that the Applicant's site had been thoroughly cleaned up and Town Planner/Land Use Counsel Carboni objected and opined that the Members should not make that finding. Chair Lucy agreed with Town Planner/Land Use Counsel Carboni's opinion. Attorney Henchy then requested that the minutes reflect that the Board included the entire record and its prior findings into this case but declined to address the matters which Attorney Henchy requested. Chair Lucy noted that the minutes would reflect this.

**2024-002/ZBA - Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee)**, for property located at 491 Shore Road (Atlas Map 7, Parcel 4, Registry of Deeds Book 8309 and Page 131). Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming use/structure in the Beach Point Limited Business District.

Chair Lucy recognized Attorney Zehnder who asked Chair Lucy for the name of the Members who would vote on this matter. Chair Lucy responded that the five full Members (Shedd, Medoff, Hultin, Crocker and Lucy) would vote.

Attorney Zehnder provided background information on this matter and noted that the sale of this property to the Applicant is incumbent upon the approval by the ZBA on this matter.

Members, Town Planner/Land Use Counsel Carboni, the Applicants, Attorney Zehner, and Attorney Agostino discussed the following highlighted topics: the determination whether a working studio on an accessory lot can be had without a primary residence on the property, taking a commonsense approach to this matter and confirmation by the Applicants that the use of the woodworking shop is explicitly for a hobby only, set back requirements, abandonment, accessory use without a primary dwelling, the consideration of a Special Permit for reconstruction of a preexisting non-conforming preexisting structure in Beach Point, an alteration of a nonconforming structure on a lot, and the accessory use of a lot without a principal use.

Chair Lucy asked if any member of the public wanted to comment and the following individuals were recognized: Mr. McCusker and Mr. Dubois.

**Vice Chair Shedd made a motion that the proposed use in the matter of 2024-002/ZBA is permitted as an accessory use on the property pursuant to Section 50.1 Note 1 of the Zoning Bylaw.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:** *Prior to the vote, Attorney Agostino noted that he and his clients thought that this application would be "dead on arrival" when the application was considered by the ZBA.*

*Attorney Agostino then requested a 3-minute recess so he may speak with his clients prior to the vote.*

*There was no opposition to the request by the Members so Chair Lucy granted the request. After the recess, Chair Lucy recognized Attorney Agostino who suggested an option for Attorney Zehnder and the Applicants to consider conditioning and delay the vote in order to avoid litigation. Attorney Zehnder*

*stated that he was not in favor of a continuance as he had given Attorney Agostino a year to negotiate and did not.* **Vice Chair Shedd – Aye**

**Member Medoff - Aye**

**Member Crocker – Aye**

**Member Hultin - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

Chair Lucy and the Members then discussed proposed conditions/findings with input from Attorney Agostino, Mr. McCusker, and Attorney Zehnder prior to the next motion. The topics discussed included: limiting the woodworking shop to non-commercial use (for example but not limited to show or retail sales on the property), machinery operation is limited to the interior of the structure, use of noisy (heavy) machinery limited to 9 AM to 7 PM per the Noise Bylaw, on conversion of the structure for the purpose of habitation use, no sanitary facilities/no port-a-potty on the property, no further increase in size (area) of structure, no bulk storage of flammable or hazardous materials, all parking to be contained to designated area as on the Site Plan, no storage of unregistered vehicles on the property, no storage of materials outside of the structure and visible to the public, no burning of materials on the lot, and an adequate number of fire extinguishers are on the property.

Following this discussion, the Members agreed that the proposed conditions and findings were acceptable in this matter.

**Vice Chair Shedd made a motion that in the matter of 2024-002/ZBA be granted a Special Permit for the alteration and reconstruction of the pre-existing nonconforming structure in the Beach Point Limited Business District and including the conditions as set forth by the ZBA and the finding that the alteration or extension is not substantially more detrimental to the neighborhood than the existing structures and that the alteration or extension will exist in harmony with the general purpose and intent of the Bylaw.**

**Member Hultin seconded the motion.**

**ROLL CALL VOTE:**

**Vice Chair Shedd – Aye**

**Member Crocker – Aye**

**Member Medoff - Aye**

**Member Hultin - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

After the vote, Attorney Zehnder requested that the Members consider a motion to allow the withdrawal without prejudice of Attorney Zehnder's application for a Special Use Permit.

**Chair Lucy made a motion to allow the withdrawal without prejudice of the application for a Special Use Permit in this matter.**

**Member Hultin seconded the motion.**

**ROLL CALL VOTE:**

**Vice Chair Shedd – Aye**

**Member Crocker – Aye**

**Member Medoff - Aye**

**Member Hultin - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

### **Minutes**

Chair Lucy led the review of the minutes of November 20, 2023 for corrections or edits and there were none.

**Vice Chair Shedd made a motion to approve the minutes of November 20, 2023 as written.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:** *Member Braun was not a member on this date and did not vote.*

**Member McKinnon – Aye**

**Member Crocker – Aye**

**Member Medoff - Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

**So voted, 6-0-0, motion carries.**

Chair Lucy led the review of the minutes of December 18, 2023 for corrections or edits and there were none.

**Vice Chair Shedd made a motion to approve the minutes of December 18, 2023 as written.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:** *Member McKinnon was absent on this date and did not vote. Member Braun was not a member on this date and did not vote.*

**Member Crocker – Aye**

**Member Medoff - Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

Chair Lucy led the review of the minutes of January 22, 2024 for corrections or edits. Vice Chair Shedd suggested an edit regarding the matter of **2022-017/ZBA (VAR/SP)**, on page 1, 3<sup>rd</sup> paragraph, to change “**voted in**” to “**expressed**”.

**Vice Chair Shedd made a motion to approve the minutes of January 22, 2024 with the modification and correction made regarding the matter of 2022-017/ZBA (VAR/SP).**

**Member Medoff seconded the motion.**

**ROLL CALL VOTE:** *Member Braun was not a member on this date and did not vote.*

**Member McKinnon – Aye**

**Member Crocker – Aye**

**Member Medoff - Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

**So voted, 6-0-0, motion carries.**

### **Board Discussion**

- ***Compliance with Filing Deadlines***

Chair Lucy recognized Member Medoff who provided background regarding this matter and the need for compliance. Members and Town Planner/Land Use Carboni reviewed the ZBA’s 2024 Hearing/Meeting Schedule. Chair Lucy suggested adding the language that late filings will not be considered by the ZBA to the letter sent by the Planning Department to all applicants. Town Planner/Land Use Counsel Carboni opined that this was acceptable.

Town Planner/Land Use Counsel Carboni will prepare language for the ZBA’s 2024 Hearing/Meeting Schedule and to post elsewhere on the Town’s website as well as for an email. Town Planner/Land Use Counsel Carboni suggested that this be added as an agenda item for the ZBA’s next meeting and there was no opposition.

Chair Lucy reviewed the agenda for the next ZBA meeting on Monday, March 25, 2024 at 5:30 pm. Member Hultin also reminded the Members that if they wish to serve on the ZBA as their term approaches expiration they must reapply. This topic will be added to the next agenda.

**Vice Chair Shedd made a motion to adjourn at 9:32 pm.**

**Member Medoff seconded the motion.**

**ROLL CALL VOTE:**

**Member McKinnon – Aye**

**Vice Chair Shedd – Aye**

**Member Braun - Aye**

**Member Medoff – Aye**

**Member Hultin – Aye**

**Member Crocker - Aye**

**Chair Lucy - Aye**

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers". The signature is stylized with a large initial "A" and a long horizontal stroke.

Alexander O. Powers

Board/Committee/Commission Support Staff



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

March 25, 2024 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Chair); Dave Crocker; Art Hultin; Nancy Medoff; Russ Braun (Alt.)

**Members Absent:** Darrell Shedd (Vice Chair); Joe McKinnon (Alt.)

**Other Participants:** Barbara Carboni – Town Planner/Land Use Counsel; Charles Silva (Applicant); Leif Hamnquist (Architect for Charles Silva – Applicant); Ben Zehnder (Attorney for Jennifer Cabral – Applicant)

Remote meeting convened at 5:30 pm, Monday, March 25, 2024, by Chair Lucy. Town Planner/Land Use Counsel Carboni announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Chair Lucy noted the recent passing of former ZBA Chair Buddy Perkel and said that he would be missed. Town Planner/Land Use Counsel Carboni added that a memorial for Mr. Perkel is scheduled for May 12, 2024.

### **Public Comment Period**

None

### **Public Hearings (New)**

**2024-003/ZBA - Charles Silva** for property located at 379 Shore Road (Atlas Map 10, Parcel 10, Registry of Deeds Book 2351 and Page 316). Applicant seeks a Special Permit to reconstruct a nonconforming structure on a nonconforming lot in the Beach Point Limited Business District.

Chair Lucy provided background information regarding this matter and then recognized Mr. Silva who provided an update on the redesigned cottage.

The Members and Mr. Silva discussed the following highlighted topics: the Applicant's determination in the application that this was not a 2-story building but a 1 ½ story building; there is no definition of 1 ½ story in the ZBA bylaw so it needs to be clarified; concern about the basement and its use for future habitation; the relocation of 2 condenser units from the west side of the building; and the deletion of a 2<sup>nd</sup> floor deck from the application.

Chair Lucy opened the hearing for public comment and there were none.

Prior to a motion being made, Town Planner/Land Use Counsel Carboni noted that the Special Permit findings must be part of the motion. Chair Lucy added that the five Members present at this hearing would be voting on the matter.

Member Hultin also stated that a letter from an abutter, Blanche Shanley, was received earlier today expressing concerns about the proposed project. Chair Lucy reviewed Ms. Shanley's concerns and noted that the Members addressed those concerns.

Mr. Silva said that a neighbor, Stephen Goodwin, had submitted a letter of support late last year but it was not in this evening's packet. It had appeared in the previously approved application and Members' packet for the Special Permit hearing.

Town Planner/Land Use Counsel Carboni recorded the following conditions: condenser units shall not be located to the west of the structure and the Site Plan shall be revised so as to remove any indication of a second-story deck.

**Chair Lucy made a motion that in the matter of 2024-003/ZBA a Special Permit be granted under Section 30.7.A and that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and the alteration or extension will exist in harmony with the general purpose and intent of this Bylaw and with the conditions as previously stated.**

**Member Medoff seconded the motion.**

**ROLL CALL VOTE:**

**Member Medoff – Aye**

**Member Braun - Aye**

**Member Hultin – Aye**

**Member Crocker - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

### **Board Action**

**2024-002/ZBA - Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee),** for property located at 491 Shore Road.

Chair Lucy provided background information on this matter and noted that the Members would discuss and vote to reopen this application.

Chair Lucy recognized Attorney Zehnder who provided an update on this matter since his last appearance. Attorney Zehnder stated that he and Attorney Christopher Agostino (Attorney for the Abutters: Crow's Nest Condominium Trust) had negotiated additional conditions which both parties would like to have added to the ZBA Members' previous decision.

Town Planner/Land Use Counsel Carboni noted that the hearing was closed and recommended that the Members vote tonight to reopen the hearing for the next meeting. Town Planner/Land Use Counsel Carboni added that she had reviewed the agreed upon conditions submitted by the two attorneys. Town Planner/Land Use Counsel Carboni added that if the Members vote to reopen the public hearing tonight,

she will let Town staff know so the hearing can be properly posted and advertised prior to the next ZBA meeting.

**Member Medoff made a motion in the matter of 2024-002/ZBA to vote to reopen the public hearing on April 29, 2024.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Member Hultin – Aye**

**Member Crocker – Aye**

**Member Braun – Aye**

**Member Medoff - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

### **Board Discussion**

- ***Compliance with Filing Deadlines (continued from the 2/26/2024 meeting)***

The Members and Town Planner/Land Use Counsel Carboni reviewed the ZBA's 2024 Hearing/Meeting Schedule and discussed the following highlighted topics: the importance of the timely submission of documents so all voices of the public may be heard at a public hearing; a proposed paragraph written and read aloud by Member Medoff to be added to the ZBA notification letters sent to attorneys, applicants, and abutters; suggested language describing the consequences and penalties as a result of missed deadlines for the timely submission of original documents or supplemental materials in order to change behavior of the parties involved; the abutters' inability to respond to an applicant's submission of a revised plan on the last day that a supplemental filing will be accepted and the ZBA's ability to determine whether the abutters should have additional time to comment on the proposed project; and suggested abutters' timelines to comment on a proposed project.

Chair Lucy asked Town Planner/Land Use Counsel Carboni, in coordination with Town staff, for the document addressing this to be drafted for his signature.

- ***Expiring Terms of Board Members – June 30, 2024***

Chair Lucy stated that five Members whose appointments are up for reappointment are due to term expiration. Chair Lucy reminded members of the public who wished to serve on the ZBA, as well as current Members who wish to be reappointed, all must complete a form and submit it to Town Hall. Chair Lucy also noted that he would prefer to have more staggered appointments so a large number of Members are not up for reappointment at the same time. Town Planner/Land Use Counsel Carboni said that she will coordinate this as a topic for an upcoming Select Board meeting with Town staff.

### **Minutes**

None

Chair Lucy asked if anyone had a topic to add to the agenda for the next meeting on April 29, 2024 and there were none.



**Member Hultin made a motion to adjourn at 6:41 pm.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Member Medoff – Aye**

**Member Crocker – Aye**

**Member Braun – Aye**

**Member Hultin - Aye**

**Chair Lucy - Aye**

**So voted, 5-0-0, motion carries.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander O. Powers". The signature is written in a cursive style with a large, sweeping initial "A".

Alexander O. Powers

Board/Committee/Commission Support Staff



# 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. 2024-002/ZBA

I, Benjamin E. Zehnder, Esq., as authorized agent of Jennifer Cabral, with respect to property located at 491 Shore Road, agree to an extension of time through May 20, 2024 for action by the Zoning Board of Appeals on the above Application filed with the Town Clerk pursuant to M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw.

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

04-24-2024

Date

Filed with the Planning Department:

Elizabeth Sturdy 4/24/2024  
Name Date

Filed with the Town Clerk:

ET 4/24/24  
Name Date



# Zoning Board of Appeals

Town of Truro

24 Town Hall Road

Truro, MA 02666

(508) 349-7004

## DECISION OF THE ZONING BOARD OF APPEALS

### Special Permits

Case Reference No.: 2024-002/ZBA

Atlas Map 7, Parcel 4

Address: 491 Shore Road

Title Reference: Barnstable County Registry of Deeds Book 8309, Page 131

Applicant: Jennifer Cabral

Owners: Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee

Hearing Date: February 26, 2024

Decision Date: February 26, 2024

- (1) Finding that the proposed use is permitted as by-right under §50.1.A, note 1, of the zoning bylaw; and the proposed use is allowed as an accessory use on the property absent a principal use pursuant to §50.1.A; for property in the Beach Point Limited Business District:

Vote:

5-0

- (2) Motion to grant a Special Permit under M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw for alteration and reconstruction of the pre-existing nonconforming structure in the Beach Point Limited business district, including conditions as set forth by the Board, and that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing and conforming use structure, and that the alteration or extension will exist in harmony with the general purpose and intent of this bylaw; for property in the Beach Point Limited Business District:

Vote:

5-0

- (3) Motion to allow withdrawal, without prejudice, the application for a Special Use Permit under M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw.

Vote:

5-0

Sitting: Chris Lucy, Chair; Darrell Shedd, Vice Chair; Art Hultin; Nancy Medoff; Dave Crocker

Following duly posted and noticed Truro Zoning Board of Appeals hearing held on February 26, 2024, the Board voted to grant a Special Permit.

The following submitted materials were considered by the Board:

- Cover Letter and Memorandum from Benjamin E. Zehnder, Esq. dated January 26, 2024
- Application for Hearing dated January 26, 2024
- Certified Abutters List
- “Existing Site Plan, Proposed Workshop, Nearen and Cubberly Nominee Trust, Christopher J. Snow, Trustee, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1” = 20’, Sheet Ex.0
- “Existing North & South Elevations, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.1
- “Existing West Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.2
- “Existing East Elevation & Floor Plan, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet Ex.3
- “Proposed Site Plan, Proposed Workshop, Nearen and Cubberly Nominee Trust, Christopher J. Snow, Trustee, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022 and Revised July 27, 2022, Scale 1” = 20’, Sheet A.0
- “Proposed North & South Elevations, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.1
- “Proposed East Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.2
- “Proposed West Elevation, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.3
- “First & Loft Floor Plans, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022 and Revised July 27, 2022, Scale 1/4” = 1’-0”, Sheet A.4
- “Foundation & Framing Plans, Proposed Workshop, 491 Shore Road, No. Truro, MA 02652, prepared for Ian S. Leahy & Jennifer E. Cabral” prepared by William N. Rogers II, dated March 2022, Scale 1/4” = 1’-0”, Sheet A.5
- Town of Truro – Fiscal Year 2024 491 Shore Road Property Card
- MapsOnline – Truro, MA for 491 Shore Road dated December 14, 2023
- “Plan of Land Located in Truro – Mass, a portion of which is shown on Land Court Plan 32258A for Crow’s Nest, Inc., Book 347 Page 95” prepared by Cape & Islands Surveying, dated October 3, 1980, Scale 1” = 20’

- “Plan of Land Located in Truro – Mass, a portion of which is shown on Land Court Plan 32258A for Crow’s Nest, Inc., Barnstable County Registry of Deeds Book 347 Page 95” prepared by Cape & Islands Surveying, dated October 3, 1980, Scale 1” = 20’
- Barnstable County Registry of Deeds Book 33 Page 127 F1
- Plan Ex.0
- Cape Cod Chronology Viewer – Cape Cod Commission, Layer List, 1952 and 1971
- Photographs (2) dated 02/09/2021
- Jennifer Cabral, Applicant Project Description Statement – 491 Shore Road, Map 7, Parcel 4, North Truro, MA
- Town of Truro Conservation Commission Minutes for August 1, 2022
- Affidavit of Janice Nearen-Bell (4 pages)
- Overhead Door Company of Cape Cod Phone Quotation dated August 24, 1999
- Affidavit of Christopher J. Snow (2 pages)
- Town of Truro Real Estate Paid Tax Statement 2002-2024 (2 pages)
- Town of Truro Planning Board Building Permit No. 143 dated November 6, 1958
- Town of Truro Application for Permit dated November 6, 1958
- Town of Truro Building Permit No. dated April 1
- Town of Truro Building Permit No. 541 dated April 1, 1964
- Town of Truro Building Permit No. 629 dated September 25, 1964
- Letter to Truro Planning Board from Albert Annone dated September 30, 1964
- Letter from S. Osborn Ball, Esq. re: Annone and removal of cottages dated September 29, 1964
- Town of Truro Application for Building Permit [blank]
- Town of Truro Application for Building Permit dated October 15, 1968 [notation BEZ overwrite 12/15/23]

**SUPPLEMENTAL:**

The Board also received:

- Email dated February 5, 2024 from Truro Building Commissioner
- Letters/emails in opposition:
  - Christopher R. Agostino, Esq.
  - Amy L. Reed Covais, Esq.
  - Donna Fay and Sharon Santangelo
  - James McCusker
  - Jeffrey and Pamela Wade
  - Len Dubois
  - Matthew McCaffrey
  - Robert and Michele Vannelli
  - Stephen McHugh
  - Therese Featherstone

- William Bibeau and Anthony Ferreira

This Special Permit Decision is based on the following findings of fact:

1. The lot at 491 Shore Road lies between Route 6 and Shore Road; it is 20,038 square feet in area and has 200.01 feet of frontage (conforming).
2. A garage is located 14.85 feet from Shore Road (nonconforming); it is roughly 20'3" by 26'31", 1-½ stories, with a gable roof and building height of 13.95 feet (peak elevation 24.24 feet - 10.29 feet elevation at ground level). The property is otherwise unimproved.
3. The applicant proposes to demolish the existing structure and construct a wood workshop in the same location. The proposed structure is roughly 20' by 26' and a building height of 20.8 feet (peak elevation of 31.09' – 10.29 feet elevation at ground level). Above the first story is a gable roof with dormers on each side. The first floor of the structure is identified as the wood workshop; there is a "storage loft" above and an area open to the first floor.

#### Issues of Use

4. The applicant states that the wood workshop is a "Working Studio" as that term is defined in the Bylaw:

"A working studio shall consist of a room(s) in a building detached from the principal residence, which is incidental and accessory to the principal residence whose use is primarily for work. A working studio may include a toilet and work-related sinks, but shall not include a shower or bathtub or residential kitchen facilities or sleeping accommodations."

Bylaw section 10.4 (Definitions).

5. A working studio is a use permitted in the Beach Point District in the Use Table. See Bylaw section 30.2. The physical characteristic and function of the proposed structure meet this definition, but a threshold question must be answered first: where there is no "principal residence" on the lot as contemplated by the definition, can the proposed woodworking shop be considered to fall within this definition? A related question is whether an accessory use is permitted on a lot in the absence of a principal use.
6. The Bylaw definition of "Accessory Use" defines such as use as "[a] use incidental and subordinate to the principal use or building and located on the same lot with such principal use or building." This definition implies that an accessory use must be tethered to a principle use on the same lot.

7. However, the Town's Zoning Bylaw expressly allows "buildings for accessory use" on lots nonconforming as to area and/or setback. See Section 50.1.A, Note 1 (excepting "buildings for accessory use and cottage" from minimum lot size and frontage requirements). Accessory structures and uses on small lots have historically existed in Truro; this development pattern is particularly common on Beach Point. The inclusion of an exception from minimum lot size for "buildings for accessory use" appears to be a recognition of this historic development pattern. The Board finds that this specific provision allowing "buildings for accessory use" on undersized lots controls over the more general Bylaw definition of the term "accessory use."
8. The Board finds that the proposed wood workshop is a "Working Studio" under the Zoning Bylaw and this accessory use is permitted on the lot (without a principle use) pursuant to Note 1 to the Table at 50.1.A

Special Permit under G.L. c. 40A, s.6 and Zoning Bylaw §30.7 and §30.8 (alteration, extension or reconstruction of nonconforming structure/lot)

9. The lot is conforming as to lot frontage (200 feet where 150 required) and, pursuant to Note 1, excepted from the minimum lot area requirement. The existing structure is nonconforming, being located within the 25-foot required front setback.
10. The Board may grant a special permit under G.L. c. 40A, s. 6 if it finds that the proposed alternation and reconstruction "shall not be substantially more detrimental than the existing nonconforming [structure and] use to the neighborhood."
11. Likewise, the Board may grant a special permit under Section 30.7.A if it finds that:  
"the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure and that the alternation or extension will exist in harmony with the general purpose and intent of this bylaw."
12. In this case, the proposed structure will have the same footprint the existing structure, and a similar form. Although there will be an increase in the height, at 20.8 feet in height, the proposed structure remains well under the maximum building height of 30 feet. In dimensions and materials, the proposed structure is consistent with structures on neighboring properties.
13. Based on the above, the Board finds under G.L. c. 40A, s. 6 that that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
14. Likewise, the Board finds under Section 30.7 of the Zoning Bylaw that the proposed new dwelling will not be substantially more detrimental to the neighborhood than the existing

nonconforming dwelling, and that the new dwelling will exist in harmony with the general purpose and intent of the Zoning Bylaw.

Conditions

This Special Permit is granted subject to the following conditions:

1. The use of the Property shall be in strict conformance with the Town of Truro Zoning Bylaw.
2. Applicant shall obtain all necessary approvals from the Conservation Commission and shall comply with all conditions therein. There shall be no additional plantings except as have been or may be approved by the Conservation Commission with notice to abutters.
3. All lighting on the property shall conform to Truro General Bylaw Chapter IV Section 6, Outdoor Lighting, and no lighting on the property shall impact neighboring property or the night sky.
4. All construction on the property, including materials, shall conform to the plans referenced herein.
5. There shall be no further increase in the size or gross floor area of the structure.
6. There shall be no modification or conversion of the structure for use or purpose of habitation.
7. Use of the property shall be limited to noncommercial use. Commercial uses, including retail sales and show of product (i.e., gallery-type use), are prohibited.
8. Operation of machinery shall be limited to the interior of the structure with windows closed.
9. Use of noise-generating machinery is limited to the hours of 9:00 am to 7:00 pm per the Town's Noise Bylaw.
10. All parking shall be contained within the designated area on the site plan.
11. No sanitary facilities are permitted on the property (including port-a-potties).
12. No bulk storage of flammable or hazardous materials is permitted on the property.
13. No storage of unregistered vehicles is permitted on property.
14. There shall be no dumpsters on the property other than during demolition and construction of the structure.
- ~~14.15.~~ No materials shall be stored outside the structure in areas visible to public.



~~15.16.~~ No burning of materials is permitted on the property.

~~16.17.~~ Adequate fire extinguishers shall be maintained at all times on the property. The Fire Department shall review and approve the building permit application to ensure that the structure and proposed use comply with all fire and safety regulations.

18. The Applicant shall utilize a sawdust collection system at all reasonable times.

19. The Applicant shall not use the Crow's Nest parking lot or beach area – however this condition is not intended to vary or modify any record or other property rights.

~~17.20.~~ Prior to issuance of a Certificate of Occupancy for the new structure, applicant shall submit to the Building Commissioner complete, stamped As-Built Plans for that structure confirming that the dimensions of the dwelling conform to this Decision. No Certificate of Occupancy shall issue until the Building Commissioner finds that the structure as built conforms to the requirements of this Decision.

This Special Permit shall lapse after one year if substantial use is not commenced within that time. See Zoning Bylaw §30.8.

\_\_\_\_\_  
Chris Lucy, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received, Office of the Town Clerk:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I hereby certify that this decision was filed with the Office of the Town Clerk on \_\_\_\_\_ and 20 (twenty) days have elapsed since the date of filing, and:

No Appeal has been filed.

An Appeal has been filed and received in this office on: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed

with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, §17)

**THE COPY OF THIS DECISION PROVIDED BY THE TOWN CLERK MUST BE FILED WITH THE REGISTER OF DEEDS OF BARNSTABLE COUNTY BY THE APPLICANT.**

DRAFT



# 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. 2022-017/ZBA

I, Christopher J. Snow, Esq., as authorized agent of Ebb Tide on the Bay Condominiums, with respect to property located at 538 Shore Road, agree to an extension of time through May 20, 2024 for action by the Zoning Board of Appeals on the above Application filed with the Town Clerk pursuant to M.G.L. Ch. 40A §6 and §30.7 of the Truro Zoning Bylaw.

Signature of Applicant/Agent

4-03-2024

Date

Filed with the Planning Department:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Filed with the Town Clerk:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



1 FRONT VIEW 1 EXISTING CONDITIONS



2 FRONT VIEW 1 PROPOSED CONDITIONS




2 FRONT VIEW 2 PROPOSED CONDITIONS



1 FRONT VIEW 2 EXISTING CONDITIONS

Ebb Tide on the Bay  
538 Shore Road  
Truro, MA

Title: 3D VIEWS 2  
Scale: As Noted  
Date: 05.10.24 NOT FOR CONSTRUCTION

Leif Hamnquist Architects  
info@lha.design 617.365.0130  
www.lha.design

REVISION DATES:




1 FRONT VIEW 3 EXISTING CONDITIONS



2 FRONT VIEW 3 PROPOSED CONDITIONS

Ebb Tide on the Bay  
538 Shore Road  
Truro, MA

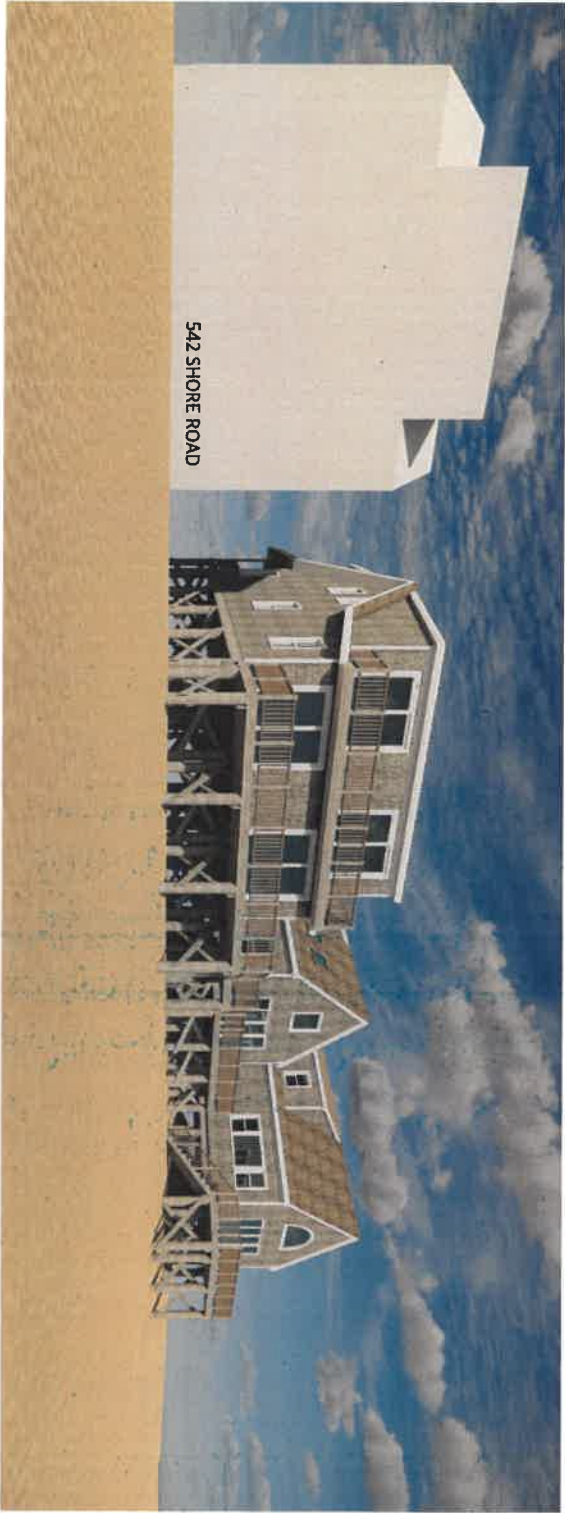
Title: 3D VIEWS 3  
Scale: As Noted  
Date: 05.10.24 NOT FOR CONSTRUCTION

Leif Hamnquist Architects  
info@lha.design 617.365.0130  
www.lha.design

REVISION DATES:




1 REAR VIEW 1 EXISTING CONDITIONS



2 REAR VIEW 1 PROPOSED CONDITIONS




1 REAR VIEW 2 EXISTING CONDITIONS



2 REAR VIEW 2 PROPOSED CONDITIONS

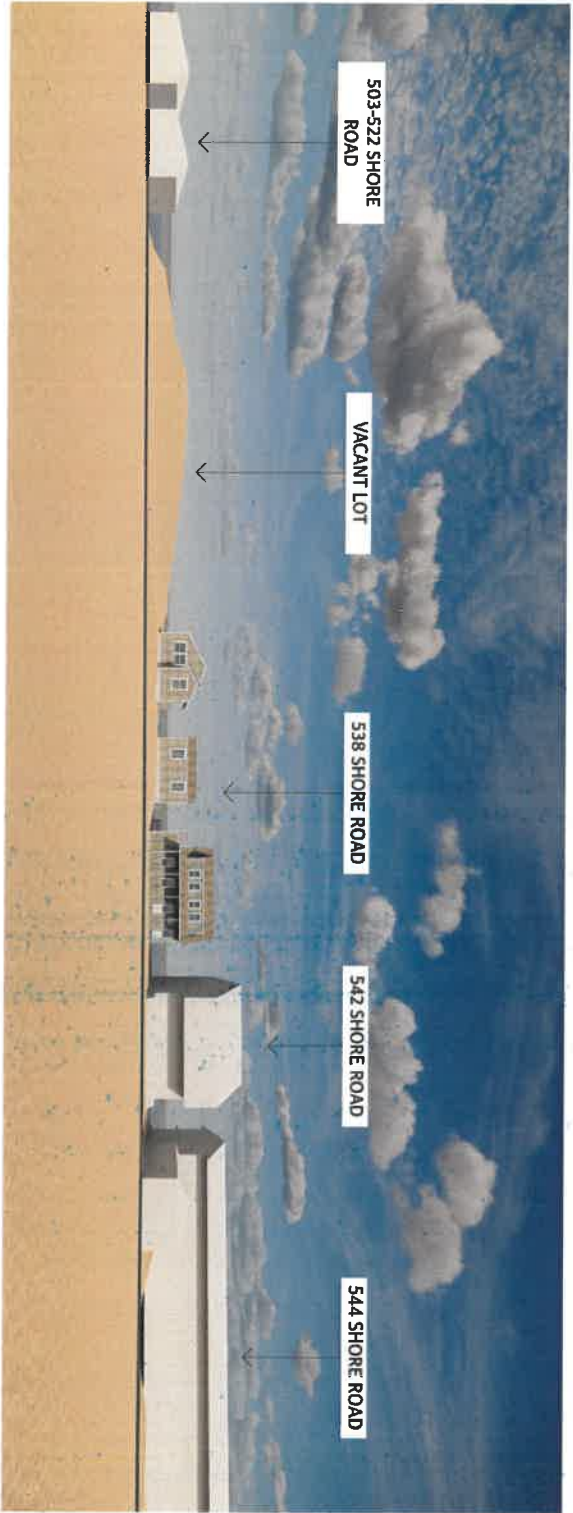
Ebb Tide on the Bay  
538 Shore Road  
Truro, MA

Title: 3D VIEWS 5  
Scale: As Noted  
Date: 05.10.24 NOT FOR CONSTRUCTION

Leif Hamnquist Architects  
info@lha.design 617.365.0130  
www.lha.design

REVISION DATES:





1 FRONT PANO VIEW 1 EXISTING CONDITIONS



2 FRONT PANO VIEW 1 PROPOSED CONDITIONS


SIDE YARD SET BACK LINE,  
EXPRESSED BY TRANSPARENT WALL



1 SIDEYARD SET BACK EXISTING CONDITIONS

SIDE YARD SET BACK LINE,  
EXPRESSED BY TRANSPARENT WALL



2 SIDEYARD SET BACK PROPOSED CONDITIONS

Ebb Tide on the Bay  
538 Shore Road  
Truro, MA

Title: 3D VIEWS 7  
Scale: As Noted  
Date: 05.10.24 NOT FOR CONSTRUCTION

Leif Hamnquist Architects  
info@lha.design 617.365.0130  
www.lha.design

REVISION DATES:
