



Zoning Board of Appeals

Town of Truro

24 Town Hall Road
Truro, MA 02666
(508) 349-7004

Staff Report

Public Hearing

November 21, 2019 at 5:30pm

Select Board Meeting Room

Overview

The application before the Truro Zoning Board of Appeals (hereafter “Board”) is for a Comprehensive Permit under MGL Chapter 40B §§20-23. These projects are commonly called “40B” projects.

The most important differences between comprehensive permit projects and other projects are:

- 1) The Board is the sole permitting authority for all local regulations, and
- 2) The applicant may request waivers from those regulations.

The law intends to spread the burden of providing affordable housing among all cities and towns as a matter of equity. Thus, Zoning Boards of Appeal in the commonwealth are generally required to grant requested waivers unless there is a serious, quantifiable risk to health, safety, or environmental degradation; or another overwhelming concern.

This does not mean that the Board is unable to substantively review the project and require changes. The Board also can impose reasonable conditions so long as those conditions make the project not financially viable, or “uneconomic” in the parlance of the law.

Zoning Boards also can deny any requested waiver if the municipality has reached a “safe harbor,” most commonly when 10% or more of a town’s year-round housing is deed restricted as affordable. Truro is currently at 2.3% of year-round housing units deed restricted as affordable, thus the Town has not reached the safe harbor.

The primary areas of review for the Board should be the Board’s own regulations as they would otherwise apply and, similarly, the regulations of the other town regulatory boards, although other factors can also be considered.

The Board does not have the ability to consider the economics or profits related to the project unless the developer represents that a proposed condition would render the project uneconomic. That said, there are profit limitations imposed by the subsidizing agencies that must approve Comprehensive Permit projects.

Project Background and Process

The proposed project is for a 40-unit residential development on Highland Road in North Truro. The site is +/- 3.9 acres and is located at the northeast corner of the intersection of Route 6 and Highland Road.

The project was chosen by the Select Board through a competitive Request for Proposals (RFP) process. The selected developer, Community Housing Resource, also constructed the Sally’s Way development as well as many projects in Provincetown and Wellfleet.

The mix of affordability and unit size is partially dictated by available subsidies. As a note, market-rate units are not necessarily more profitable than affordable units due to the availability of subsidies. The unit mix was also planned to meet the requirements of the Town’s RFP.

The proposed mix of units in the project is:

Income Level	1 Bedroom	2 Bedrooms	3 Bedrooms
30% AMI and below	2	2	
60% AMI and below	8	7	2
110% AMI	8	2	2
Market Rate (un-restricted)		3	4
Totals	18	14	8

Affordability level are defined based on the US Department of Housing and Urban Development standards for each county. Barnstable County’s Area Median Income (AMI) for a family of 4 is \$91,300 for 2019. This is the basis for both eligibility and rents, with the rents being priced at 30% of income going to housing costs.

The site had been reserved by DOT for the construction of separate on- and off-ramps to Route 6, commonly called cloverleaves. The state transferred the land to the Town at no cost on the condition that it be used for affordable housing. Providing land at no cost to an affordable housing developer is a common practice as an additional form of subsidy.

Further subsidies, including local funds such as Community Preservation Act funds, will also be required. This is common for affordable housing projects.

Review Standards

In order to construct the project on the site, the project needs zoning waivers for the use (multi-family housing), growth management, and some dimensional requirements have been requested. Additionally, waivers from Board of Health and other Town regulations are requested for town standards that are more stringent than state standards. A table of waivers from the application is attached. These areas should be reviewed for any considerable impacts to the purposes and values they are intended to protect.

Additionally, the Board should consider the standards of Site Plan Review. Under the Town's Zoning By-laws, all projects other than 1- or 2-family homes are reviewed under "Commercial" Site Plan Review. The Planning Board has created forms that lay out the requirements of Commercial Site Plan Review. This will be a useful tool during the review process.

Hearings

As this project is larger in scale than those typically seen by local boards in Truro, the review of the project will be a multi-step process.

Staff suggests the first hearing primarily consist of the presentation of the project by the applicant, questions for the applicant by the Board and the public, and a scoping of how to handle the relevant issues at later hearings.

The Board may wish to request that initial comments from the public be limited to clarifying questions and certain issues or concerns they would like further explored. Depending on the number of those wishing to speak, the Board may limit comments to a set time period and/or compile public questions to be answered later by the applicant in writing. Again, there will also be multiple opportunities for additional public comment.

Detailed technical comments by the public may be more appropriate at later hearings, and the Board will also receive comments from some of the Town's regulatory boards in advance of the next hearing.

In addition, the Cape Cod Commission acts as a local board for Comprehensive Permit projects. Staff has requested that the Commission look closely at impacts in particular to water resources and traffic. We expect the Cape Cod Commission comments prior to the next hearing as well.

Actions

Staff suggests that prior to the continuance of the first public hearing, the Board should discuss:

- 1) A list of the significant questions that must be answered and additional materials that may be required for the applicant to address those questions.

The Board can request additional materials or peer reviews at any time in the hearing process.

- 2) The date and time of the next continued public hearing and site visit.

The proposed date for the continued hearing is December 5th with a site visit at 3:00pm and the continued hearing at 5:30pm.

- 3) Preliminary dates for subsequent public hearings.

The additional dates proposed are December 12th and December 19th. Additional hearings may be required in January.

- 4) The order in which the Board would like to deal with the relevant issues identified.

EXHIBIT T

REQUESTED WAIVERS

REQUESTED RELIEF FROM LOCAL BY-LAWS, RULES AND REGULATIONS

Relief from Truro Zoning Bylaws as follows:

Section 30 Use Regulations

Only single-family residential use is permitted in the Residential District; therefore, relief is requested to allow multi-family and two-family residential use.

Permitted Accessory Use in Residential District does not include: On-site Management Office, Community Room or Storage, therefore relief is requested to allow such use as part of the multi-family building.

Section 40 Special Regulations

Special Regulations of this section are generally not applicable, except Section 40.6 Growth Management. This section limits residential building permits issued within any calendar year to 40, and further limits the total number to any one applicant to 4. Section 40.6.C.1 does provide for exemptions for “construction of affordable housing units provided such housing units have deed restrictions to ensure they remain affordable for the maximum period permitted under Massachusetts Law” however the definition of “Affordable Housing” in the bylaws refers only to housing certified as affordable by the Truro Housing Authority. The definitions in the Zoning Bylaw also defines “Affordable Households” as households earning no more than 80% of the AMI as determined by DHCD. These definitions are potentially contradictory with the mixed income nature of this rental housing development. Therefore, relief from this Growth Management section is requested to exempt all rental units in the development including the units that have deed restrictions up to 110% AMI and the unrestricted Market Rate units, so that building permits can be issued at once.

Section 50 Area and Height Regulations:

Dimensional Requirements – –	Required	Provided
Minimum Sideyard Setback	25 feet	see chart for buildings requiring waivers**
Maximum Building Height	2 stories; 30 feet	see chart for buildings requiring waivers**

Relief Required Building #	Minimum Sideyard Setback	Maximum Building Height (definition of building height to ridge above existing grade)	number of stories
2-4-6	conforming at 27.6'	conforming at 29' 6"	**waiver required at three stories; definition of basement may result in determination that the west side foundation exposure of the staggered structure might classify this basement as a third story; relief required.
9-11	** waiver required at 24' to foundation excl. egress porch	conforming at 22'6"	conforming at two stories
13-15	**waiver required at 14.8' to foundation excl. egress porch	conforming at 24'6"	conforming at two stories
8-10, 12-14, 16-18	**waiver required at 20' to foundation excl. egress porch	conforming at 26' conforming at 25'3" conforming at 27'3"	conforming at two stories conforming at two stories conforming at two stories
17-19	**waiver required at 14.6' to foundation excl. egress porch	**waiver required at 36'11" due to fill placed at rear of site above existing grade; appears 24'8" at roadway	**waiver required at three stories; definition of basement in terms of foundation exposure on more than one side will classify this basement as a third story; relief required
20-22	conforming at 51.5'	**waiver required at 31'11" due to fill placed at rear of site above existing grade; appears 24'8" at roadway	**waiver required at three stories; definition of basement in terms of foundation exposure on more than one side will classify this basement as a third story; relief required
21	conforming at 61' west side and 40' east side	**waiver required at 41'5"; definition of building height above existing grade; visible height from road is 30'3" as compared to smaller structures at 26'6"	**waiver required at three stories; definition of basement in terms of foundation exposure on more than one side will classify this basement as a third story; relief required

Section 70 Site Plan Review:

Applicant is presenting a site plan, landscape planting plan and site lighting plan that incorporates many Site Plan Review requirements. Applicant seeks relief from the requirements of Site Plan Review procedures and requirements; and, to allow the Comprehensive Permit to be issued in lieu thereof.

Rules and Regulations Governing the Subdivision of Land, Truro Massachusetts:

The proposed development is not a subdivision of land and the Rules and Regulations Governing the Subdivision of Land do not apply.

Curb Cut Permit Procedure:

The Applicant requests that the Comprehensive Permit substitute for Curb Cut Permit from the Town of Truro. MA DOT Curb cut Permit is being sought by Truro DPW.

Relief from Truro Board of Health Local Regulations

Relief from specific requirements of Article 14 of the Truro Board of Health regulations in excess of MA DEP Title 5 regulations is requested.

The Truro Board of Health regulation requiring 10,000 square feet of land per 110 gallons per day (gpd) would require total acreage of 17.8 acres to support the Title 5 flow from the Cloverleaf Rental Housing development. This could only be achieved through the inclusion of the acreage of the entire MA DOT layout of the Route 6 Highland Road Cloverleaf interchange, approximately 15.6 acres in addition to the 3.91 acre parcel that was separated as surplus land and transferred to the Town of Truro. Although this land remains under MA DOT ownership, not the Town of Truro, it is “buildable upland” that will not be developed and therefore can contribute to the aggregate nitrogen loading land area. Similarly, the abutting land of the Cape Cod National Seashore will not be developed and could also be considered as contributing to the aggregate nitrogen loading analysis. Since there is no easement or ownership of the MA DOT or Cape Cod National Seashore abutting land, this aggregate loading analysis is illustrative only to demonstrate the particular characteristic of this Cloverleaf parcel as it abuts substantial publicly owned undeveloped land. The alternative of denitrification Alternative / Innovative septic technology would be an excessive cost that would burden the housing development budget as an upfront cost as well as ongoing annual system maintenance / monitoring expenses. Also, since the intent of bylaw is in part to protect private wells, it is noteworthy that the mapped ground water flow indicates an eastward flow from the proposed Title 5 Septic System leach field away from wells on the abutting properties.

Also, it should be restated here that the site will be served by municipal water extension through the site and the Title 5 System proposed is conforming under MA DEP Title 5 regulations.

The Applicant seeks relief from the Truro General Bylaws and Other Regulations, as follows:

Relief is requested from any other zoning bylaw, general bylaw or regulations or procedures that may be identified in the review process if full compliance is not physically or economically feasible.

Relief is requested from the applicability of such other sections of the Zoning By-law, the Subdivision Control Regulations, or of such other local rules and regulations that would otherwise be deemed applicable to this development.

Relief is requested from requirements, if any, to post a bond, cash, Letter of Credit, or impose Planning Board Covenants, related to site development.

Relief is requested from any requirements for paying fees for any regulatory review or for any permits related to the development of this project, including but not limited to fees for building permits and septic system installation permits;

The Applicant requests that the Comprehensive Permit be issued in lieu of all the aforementioned permits, inclusively.