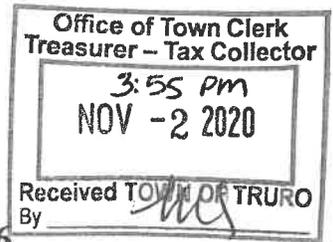




Town of Truro

P.O. Box 2030, Truro, MA 02666
Tel: 508-349-7004 Fax: 508-349-5505



ZONING BOARD OF APPEALS Agenda

DATE OF MEETING: Thursday, November 5, 2020
TIME OF MEETING: 5:30 pm
LOCATION OF MEETING: Remote Meeting
www.truro-ma.gov

Open Meeting

This will be a remote meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment via the link below, which can also be found on the calendar of the Board's webpage along with the meeting Agenda and Packet, or by calling in toll free at [1-866-899-4679](tel:1-866-899-4679) and entering the following access code when prompted: [992-438-853](tel:992-438-853). 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 the Town Planner at planner1@truro-ma.gov.

Meeting link: <https://global.gotomeeting.com/join/992438853>

Hearing materials can be found at the following web address:

www.truro-ma.gov/zoning-board-of-appeals/pages/cloverleaf-40b-application

Public Hearing – Continued

2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor’s Map 36 and Parcel 238-0 containing 3.91 acres of land area.

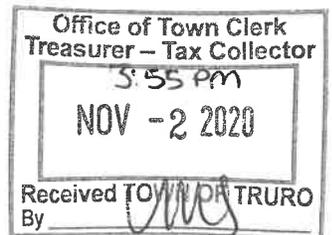
- Waivers

Public Comment

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.

- Public Comment Letters from:
 - ◆ Mary Ann Larkin for the residents of Pond Village
 - ◆ Karen M. Ruymann
 - ◆ David Kirchner
 - ◆ Members of the Pond Village Community
 - ◆ Pamela Wolff

Adjourn



STAFF MEMORANDUM

To: Truro Zoning Board of Appeals

From: Barbara Carboni, Interim Town Planner/Town Counsel, KP Law

Date: October 2, 2020

Re: Waivers under G.L. c. 40B and Applicant's Waiver Requests, **UPDATED**

Section I contains guidance on the principles and process under which the Board considers requests for waivers of local regulations. **Section II** contains the Applicant's waiver requests, somewhat rearranged and edited for efficiency, and with comment.

I. Waivers under G.L. c. 40B

Under G.L. c. 40B, ss. 20-23, the Zoning Board of Appeals *may*, but is *not required* to waive any Bylaw or other local regulation with which a proposed project does not comply. The Board may grant some waivers requested by the applicant, and deny others. With respect to each waiver requested, the Board must decide whether the waiver is "consistent with local needs." G.L. c. 40B, s. 20 defines "consistent with local needs" as:

"reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces."¹

A shorthand version: reasonable when balancing (1) *regional and local affordable housing need* and (2) *public health and safety, contextual site and building design, and open space preservation*.

As a practical matter, certain waiver requests are central to the project, and if denied will effectively deny the project. For example, in this case, the Use Table in Zoning Bylaw Section 30 does not permit multifamily use, so if the project is to be approved, this Bylaw provision must necessarily be waived. But the Board must *first* determine whether waiver of this Bylaw to allow multifamily housing is "consistent with local needs." If the Board finds that multifamily use is reasonable when balancing (1) and (2) above, then the waiver is consistent with local needs.

The Board may grant a waiver in part, or to some lesser extent than requested. For example, in this case, the Applicant requests approval for thirty-nine units of multifamily housing on a site of 3.91 acres. This requires waiver of the Zoning Bylaw's Lot Area

¹In addition, "consistent with local needs" means "applied as equally as possible to both subsidized and unsubsidized housing."

requirement, which would limit development to five units (@33,750 square feet per dwelling unit. The Board may waive the Bylaws to allow a multifamily development of *fewer* than thirty-nine units – in effect, granting the waiver in part, and denying it in part.² It is within the Board’s authority to do so *only if* it finds that the project at the density requested (39 units) is not “consistent with local needs.”

Where a Board is inclined to deny a waiver, there is typically discussion with the applicant regarding the impact of such denial on the project. This is one reason why public hearing is left open, so that both the applicant and the public may comment on waivers. The applicant may make the case that the project would be rendered “uneconomic” by the waiver denial. In such case, the Board is entitled to ask the applicant for a project *pro forma*, which the Board may then consider in deciding whether to grant or deny the waiver.³ This process also applies to the Board’s consideration of any permit conditions. The Board need not request a *pro forma*, and many G.L. c. 40B projects are permitted and conditioned without this step.

Input on waivers

G.L. c. 40B, s. 21 states that the Board, “in making its decision on [the] application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants.” Where Town boards or departments, or the Board’s peer reviewer have made recommendations regarding waiver requests, the Board must consider these recommendations. The Board may also consider recommendations expressed by members of the public. Ultimately, however, it is up to this Board whether to grant or deny any waivers.

Why discuss waivers now?

Finally, it is reasonable to ask whether the Board can, or should be considering waiver requests before it has voted on whether to grant a comprehensive permit. The answer is that waivers are such a significant part of a G.L. c. 40B permit that it makes sense to review them up front. This is especially true for waivers without which the project cannot be built. If the Board is inclined to deny a waiver, this gives the applicant the opportunity to address any issue raised by the Board and potentially modify the project – or to make a case that the denial would render the project uneconomic. In short, it allows for useful dialogue.

If the Board elects to discuss waivers prior to voting to grant or deny a permit, this does *not* mean that the Board has already determined that a permit should issue. The discussion may be seen as determining what waivers the Board could find as “consistent with local needs” if it elects to grant a permit.

² This may also be viewed as imposing a condition limiting the development to a specific density.

³ The *pro forma* may be subject to peer review if the Board so desires. Note that “uneconomic” is a G.L. 40B term of art, and it is up to the subsidizing agency to set profit limits. The Board cannot apply its own definition of what is an appropriate return.

II. Applicant's Waiver Requests

With the Applicant's cooperation I have edited and rearranged the waiver requests for the Board's discussion. Below are the waiver requests, in some cases with supporting argument from the Applicant and Staff comment. Additional waivers not requested by the Applicant but needed for the project are also identified.

Board of Health Regulations

Applicant's request: Relief from specific requirements of Article 14 of the Truro Board of Health regulations in excess of MA DEP Title 5 regulations.

Article 14: Nitrogen Loading Requirements

"The Truro Board of Health hereby requires that all properties within the Town of Truro meet the loading restrictions set forth in 310 CMR 15.214 and contain at least ten thousand (10,000) square feet of Buildable Upland (as defined in Article 1 hereunder) for every 110 gallons per day of design flow and that all systems designed to serve said facilities meet the same restrictions and requirements contained in Title 5 as the "Nitrogen Sensitive Areas" defined in 310 CMR 15.215 irrespective of whether the properties are located within Nitrogen Sensitive Areas as so defined."

Staff Comment: The Board's peer reviewer, Mark Nelson of Horsley Witten Group, has noted that this regulation limits wastewater flow to 440 gallons per day per acre. The Cloverleaf site contains a total of 3.91 acres or 170,320 square feet. Under Article 14, the maximum wastewater discharge would be 1,874 gallons per day. The proposed system for this project has a design flow of 7,480 gallons per day. Waiver of Article 14 would be required to allow this discharge in excess of the 1,874 gpd limit for a parcel of this size.

Mr. Nelson found that the Applicant's original wastewater disposal system did not comply with Title 5 or Article 14 of the Truro Board of Health regulations. The Applicant then submitted a revised proposal utilizing the BioMicrobics treatment system, an Innovative/Alternative technology system. Mr. Nelson's report dated July 6, 2020, reviews the system proposed and contains his discussion of this waiver request. Mr. Nelson concludes that waiver of Article 14 is appropriate, conditioned on an Operation and Maintenance Agreement; monthly sampling of wastewater effluent for one year (reduced to quarterly if warranted); a contingency plan; and groundwater monitoring downgradient of the leaching field.

Article 9: Innovative/Alternative Technology [additional waiver required]

The proposed BioMicrobics treatment system for the project is an Innovative/Alternative technology certified for enhanced nutrient removal by the Department of Environmental Protection. Article 9 limits the use of I/A Technology treatment systems to "Remedial Use Situations" arising from failed or nonconforming systems:

"(2) Standards. Innovative/alternative (hereinafter, "I/A") technologies, as defined herein, will only be permitted in Remedial Use situations, and as defined herein (see article 3). I/A technology will not be permitted in any other situations."

Use of the I/A BioMicrobics system for the project, which is not a Remedial Use Situation, requires a waiver from this Bylaw.

Zoning Bylaw

Section 30: Use Regulations

30.1(A): General Requirements

Allows “single-family dwelling or single-family dwelling with accessory apartment use” only. Waiver required to allow multi-family and two-family use.

30.2 Use Table. Does not allow two-family or multi-family use. Waiver required to allow these as principal uses.

30.2. Use Table. Does not allow on-site management office, community room or storage as accessory uses. Waiver required to allow these uses as accessory uses in conjunction with multi-family use.

Section 40.6: Growth Management

B. Residential Development Limitation

“1. There shall be no more than forty (40) building permits for new single family dwelling units authorized within any calendar year, beginning January 1 and ending December 31. . .”

Other portions of Section 40.6 limit the issuance of permits to any one applicant during a single month or year.

From Applicant: : 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.

Staff Comment: Staff agrees that a waiver of Section 40.6 is required to allow the issuance to a single applicant of building permit(s) for the construction of 39 dwelling units. Staff believes that if a waiver is granted, the exemption in Section 40.6.C. 1 is not relevant.

Section 50: Area and Height Regulations

50.1 Regulations

A. Table (Dimensional Requirements)

The Applicant has submitted the following table based 50.1.A, requesting **side yard and building height waivers**, with more detail in the second table below.

<u>Dimensional Requirements</u>	<u>Required</u>	<u>Provided</u>
Minimum Lot Size:	33,750 sq. ft.	170,320 sq. ft.
Minimum Lot Frontage:	150 feet	209.61 feet
Minimum Frontyard Setback	25 feet	42 feet
Minimum Sideyard Setback	25 feet	see chart for buildings requiring waivers**
Minimum Backyard Setback	25 feet	42 feet provided [Building 23-25]
Maximum Building Height	2 stories; 30 feet	see chart for buildings requiring waivers**

Staff Comment: Minimum lot size is a limit on density; only five lots/dwelling units would be permitted on a parcel of 170,320 square feet. Staff believes that at 170,320 square feet, the does not satisfy the Bylaw minimum lot size for a project of thirty-nine dwelling units and that a waiver of 50.1.A is required to allow this density

<u>Dimensional Requirements</u>	<u>Required</u>	<u>Provided</u>
Minimum Sideyard Setback	25 feet	see chart for buildings requiring waivers**
Maximum Building Height	2 stories; 30'/23' flat	see chart for buildings requiring waivers**

Relief Required Building Number	Minimum Sideyard Setback – 25 feet Required	Maximum Building Height (definition of building height to ridge above existing grade) – 30' max	number of stories – two story maximum
1-3	conforming at 40.8 feet	conforming at 21.7 feet	conforming at two stories
5-7	**waiver required for setback at 12.3 feet	conforming at 24 feet	conforming at two stories
2-4	conforming at 91.2 feet	conforming at 28 feet	conforming at two stories
6-8	conforming at 34.2 feet	conforming at 28.5 feet	conforming at two stories

9-11	conforming at 33.3 feet	conforming at 25.25 feet	conforming at two stories
13-15	**waiver required at 24 feet to foundation excl. egress porch	conforming at 23.75 feet	conforming at two stories
10-12, 14-16, 18-20	**waiver required at 20' to foundation excl. egress porch	conforming at 27.25 feet conforming at 26.5 feet conforming at 28.5 feet	conforming at two stories conforming at two stories conforming at two stories
17-19	**waiver required at 14.8 feet to foundation excl. egress porch	conforming at 25.75 feet	conforming at two stories
22-24 23-25	conforming at 51.5' **waiver required at 14.6 feet to foundation	**waiver required at 36'11" **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 31.5' that exceeds 23' limit for flat roof; based on def of building height above existing grade; visible height from road is 22.5' at front and 31.5' at rear	**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

Staff Comment: These tables should be reviewed and discussed in conjunction with site plans and elevations. The building heights and waivers requested for buildings 21, 22, 23, 24, 25 should be more fully described.

50.2: Building Gross Floor Area for the Residential District

“B. Applicability and Exceptions:

1. Total Gross Floor Area Allowed by Right: [B]uilding permits for new construction . . . shall be issued only where, on completion of the construction or project, the 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 square ft. and prorated to 3,668 sq.ft. for one acre of land:

a. Plus 300 sq.ft. for each additional contiguous acre of land, or fraction thereof prorated.

..

2. Special Permit to exceed the Total Gross Floor Area limit: The Total Gross Floor Area limit for a dwelling and accessory buildings on a lot established in subsection 50.2.B.1 may be exceeded up to a maximum established by this subsection, by Special Permit. No Special Permit may be issued for any construction if the construction would result in the Total Gross Floor Area exceeding 4,600 sq.ft. for a Residential District Minimum Lot Size of 33,750 (or .775 acre) and prorated to 4,600 sq.ft for one acre of land:

a. plus 300 sq.ft. for each additional contiguous acre of land, or fraction thereof prorated.

...”

Staff comment: At 3.91 acres, the Total Gross Floor Area allowed as of right on the project site would be 4,568 sq. ft. (3,668 for the first acre + 300 sq ft. for each additional acre or fraction). The Total Gross Floor area allowed by Special Permit would be 5,568 sq ft (4,668 for the first acre + 300 sq. ft for each additional area or fraction). As calculated by the Applicant, the Total Gross Floor Area of the project is 46,172 sq.ft. A waiver is required for construction of all Floor Area in excess of 5,568 sq. ft.

Section 70: Site Plan Review

70.3. Commercial Development

A. Commercial Site Plan Review is required for:

1. Any construction, alteration, expansion, or modification of any properties, structures and uses other than that of single or two-family residences and their accessory uses and structures.

Applicant’s presentation (condensed): 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. Applicant is presenting a site plan, landscape planting plan and site lighting plan that incorporates many Site Plan Review requirements. The applicant has submitted the Commercial Site Plan Review Checklist and questionnaire as evidence of substantial conformance with the Procedures and Plan Requirements of Site Plan Review. Relief is requested from requirements, if any, to post a bond, cash, Letter of Credit, or impose Planning Board Covenants, related to site development.

Staff Comment: Under G.L. c. 40B, a separate Site Plan Review process cannot be required. This Board’s review of the comprehensive permit application substitutes for Site Plan Review under Section 70. The Applicant has submitted most of the information required under Section 70.3.D,⁴ and the Board has reviewed plans extensively - including with the benefit of peer review. The Board may conclude that its review has been consistent with Section 70.3, and that

⁴ Exception: lighting plan. I have asked Applicant to provide.

waiver of any remaining procedural or substantive requirements is warranted. Given the scale of this development and its impacts, the Board may wish to review the project's conformity with the Review Criteria/Design Guidelines of Section 70.3.F.

Subdivision Rules and Regulations

Staff Comment: Although the project is not a subdivision, it is residential development of a scale and impacts consistent with those of a subdivision. For this reason, many of the standards contained in the Rules and Regulations should be considered applicable to the project, and where noncompliant, waivers should be requested and considered by the Board. Section 3, Design Standards and Section 4, Specifications for Construction of Roads, and Appendix 2, Table 1 (Recommended Geometric Design Standards) are of particular importance.

Applicant's presentation: The applicant will comply with the intent of the Subdivision Control Regulations with the exception that the applicants requests the waiver of the Planning Board role and this review be made by the Zoning Board of Appeals as part of the Comprehensive Permit under MGL Chapter 40B. In addition, specific relief /waiver is requested:

Section 3. Design Standards

Section 3.6. Street Design

Section 3.6.6. Dead-end streets

a. "The length of dead-end streets should not exceed one thousand (1,000) feet."

Waiver is required: Loop roadway is 1,060 +/- feet long.

Section 3.6.7. Adjacent properties

"Proposed subdivision roads shall be separated from subdivision boundaries by a screening buffer of twenty-five (25) feet width or more. . . ."

Waiver is required: Access road is within 25 feet of side line, adjacent to Unit 21 (east), 13 feet provided.

Section 3.6.8. Design Standards: Table 1 in Appendix 2 – Type C

- Minimum Roadway width: 20 feet

Waiver is required: loop road has 14 foot travel way, with 1 foot berms provided (one-way traffic)

- Minimum Radius at street centerline: 290 feet

Waiver is required: 100 feet provided at Highland Road entrance; 50 feet provided within the site.

- Maximum Grade: 8%

Waiver is required: Main Access Road 10% proposed

- Minimum curb radius: 30 feet

30 feet required; 30 foot radius provided on main access road – exit lane

APPLICANT TO CLARIFY: Is waiver required and if so, where?

- Dead-end Street maximum length: 1000 feet
Waiver is required: loop roadway is 1,060 feet +/- long

Section 4: Specifications for Construction

4.1.8 Berms

“Berms shall be provided on both sides of all paved roads where the grade is 3% or greater. Bituminous concrete berms, eighteen (18) inches in width on rolled asphalt base or binder course, shall be constructed. . .”

Waiver is required: 12 inch berms proposed

4.1.10 Vegetation:

“Existing trees of over six (6) inches in diameter, measured at four and one-half (4-1/2) feet above existing grade, outside the travel surface of any proposed or existing roads and on proposed building lots should be preserved. . . .”

Waiver is required: Trees within the proposed limit of work line shall be removed as needed to allow for the construction of the development, beyond the edge of clearing for the roadway.

Additional waiver requested:

2.5.4(c) Performance Guarantee

Requires a performance guarantee in the form of a bond, deposit, or covenant to secure construction of ways and installation of municipal services.

The Applicant has requested waiver of “any requirement. . . to post a bond, cash, Letter of Credit, or impose Planning Board Covenants, related to site development,” which would include the above.

Staff Comment: To protect the Town’s interests and investment in this project, denial of this waiver is recommended.

General Bylaws

Chapter 1, Section 8: Soil Removal

1-8-1. “The removal of topsoil, loam, sand, gravel, clay, hardening, subsoil and earth from any parcel of land not in public use in the Town of Truro except as hereinafter provided, shall be allowed only after a written permit therefore is obtained from the Building Commissioner.

Applicant's presentation [condensed]: Applicant requests waiver of the requirement that the Permit for Soil Removal be obtained from the Building Commissioner, and that the Permit for Soil Removal, with any conditions imposed, be issued by the Zoning Board of Appeals as part of the Comprehensive Permit. Applicant requests waiver of any bond or other security.

Staff Comment: Under G.L. c. 40B, a separate permit cannot be required for the earth removal involved in this project, but the Board may secure, through a permit condition requiring administrative review, compliance with any reasonable standards and conditions that would be applied to a non-40B project. Through discussion with the Building Inspector and DPW Director, in lieu of a soil removal permit, the DPW director will have oversight of soil removal activity during the Town's part of the project, and this activity will be subject to review and approval by the Board's consultant during the Applicant's portion of the project.

Curb Cut Permit

Applicant's presentation: 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.

Staff Comment: Curb Cut Permits are issued by the Select Board following review by DPW and Chief of Police. The proposed project will have curb cuts on Highland Road (main entrance) and Route 6 (emergency access). The Highland Road curb cut has effectively been reviewed by DPW and the Police Chief as part of the comprehensive permit process. The DPW Director has confirmed that DPW will apply for the MassDOT curb cut approval. The Town's curb cut permit requirements may be waived.

Catch-all waivers

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.

Staff Comment: Catch-all waivers are not recommended. Any relief sought should be specifically identified and considered by the Board.

Waiver of fees

Applicant's presentation: 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.

Staff Comment: The Board may:

- grant the relief as requested – relief from payment of *any* fees
 - waive some fees and not others
 - waive a percentage of fees (this is sometimes done in proportion to the percentage of affordable units in the project)
 - decline to waive any fees
-

Other

Section 30.9 Parking

Section 30.9 requires two parking spaces per dwelling unit. The development's 39 dwelling require 78 spaces; 81 spaces are provided.

Section 30.9.C. Off Street Parking Schedule, provides in part that “in determining the number of spaces required only delineated spaces which *are not obstructed* shall be calculated.” [emphasis added]. The Planning Board has suggested that there are “at least 10 obstructed spaces” on the proposed plans and therefore an insufficient number of spaces provided. See comment letter dated July 28, 2020 and September 4, 2020 (“at least 11”). The Planning Board also suggests that the Management Office and Community Room visitor uses require additional spaces.

Staff Comment: The Board may determine the meaning of the Bylaw language and implications for the applicant's proposed number of spaces. If the Board finds that the number of parking spaces does not meet the Bylaw requirement, it may consider a (partial) waiver of the requirement.

October 29, 2020

Dear Members of the Truro Zoning Board of Appeals:

We're hoping that the following excerpts from the international and national scientific and medical community might be helpful to you in solving this difficult problem of nitrates in Pond Village's drinking water. We're hoping also that it will give you a more complete understanding of the reasons for our concerns. Let me apologize at the outset of this letter for this late information. As you now know, Pond Village residents were unaware that elevated nitrates in their drinking water placed them at such high risk to their health. However, we became recently aware of research findings such as these from multiple medical and scientific journals. They have alerted us to the reality that our health may be further imperiled by the Cloverleaf project as it is currently proposed.

The ENVIRONMENTAL WORKING GROUP points out that the standard of 10 mg/L as the maximum contamination level (MCL) for nitrates in drinking water was set in 1962 and has not been revised, just as Truro's standard has not been revised. They recommend an MCL of 1 mg/L. To quote: "Studies conducted in the U.S. and in other countries found greater incidence of colorectal, ovarian, thyroid, kidney and bladder cancers in people exposed to nitrate in drinking water....Studies also report that nitrate contamination of tap water can harm the developing fetus."

THE JOURNAL OF PREVENTIVE MEDICINE says that reducing the nitrate level in drinking water to 5 mg/L "would become consistent with other European countries and would encourage the prudent public health strategy of limiting human nitrate exposure."

The ENVIRONMENTAL HEALTH PERSPECTIVES reports that "women who had babies with neural tube defects, limb deficiencies, and oral cleft defects were significantly more likely than control mothers to ingest 5 mg/L of nitrates per day from drinking water."

The INTERNATIONAL JOURNAL OF CANCER “found statistically significant increased risks of cancer at drinking water levels above 3.87 mg/L.”

The INTERNATIONAL JOURNAL OF PUBLIC HEALTH reports that since 2005, more than 30 epidemiological studies have evaluated drinking water nitrates. The studies concluded that the “strongest evidence for a relationship between drinking water nitrate ingestion and adverse health outcomes (besides methemoglobinemia, i.e. blue baby syndrome) is for colorectal cancer, thyroid disease and neural tube defects.”

The INTERNATIONAL JOURNAL OF CANCER found “statistically significant increased risks at drinking water levels above 3.87 mg/L.”

The journal EPIDEMIOLOGY found “an increased risk of thyroid cancer with higher average nitrate levels in public water supplies and with longer consumption of water exceeding 5 mg/L of nitrates.” Perhaps most shocking is their finding that “average drinking water nitrates above the 95th percentile of 2.07 mg/L, compared with the lowest quartile of 0.21 mg/L, are associated with bladder cancer.”

We could continue to cite studies, but we find it overwhelmingly clear that the major problem that these studies reveal is that any nitrate level above 5 mg/L is dangerous. In fact, much research suggests, including our own Silent Spring Institute, that 1 mg/L is the desired level.

We urge the ZBA to postpone any decisions until these major threats to the health of Truro’s citizens can be ameliorated. We understand that other studies are forthcoming.

With much gratitude and sympathy for this dilemma that we all find ourselves in,

Mary Ann Larkin for the residents of Pond Village

November 2, 2020

Dear Members of the Zoning Board of Appeals,

The Public has been following the proceedings of the Truro ZBA with great interest in the past few months. The neighbors of Pond Village wholeheartedly support Affordable Housing in Truro and are aware of the acute need. We are incredibly grateful for our neighbors at Sally's Way. However, we have recently become better-educated on the fragile state of the Aquifer in the Pond Village Neighborhood, as well as the complexity of the ecological issues before us as we look to good stewardship of our natural resources.

The members of the ZBA have volunteered countless hours bringing the Cloverleaf Project forward. We applaud your time and commitment to Truro. We understand your desire to move the project ahead, yet we remind you of the vital requirement to pause and consider new information. Staying on your self-imposed schedule must take a back seat to considering new information as the Community educates itself on critical data that underscores the significant health risks to the Community. Many 40B Projects in MA take years to come to fruition, especially if litigation transpires during the process. As you know, several scientific and medical professionals are presenting the "Docs Report" to the BOH on December 1st, a meeting which is attracting great interest from Town officials all across the Cape and the citizens they represent, all of whom are concerned about water safety. It might be wise to pause the Cloverleaf ZBA proceedings until AFTER the BOH has had time for follow-up and community interaction. Perhaps waiting until the New Year to reconvene will allow time for clarity?

In a parallel to the above notion, a few members of this Board have remarked both during ZBA meetings and in recent press articles about questions put forth by the Public, indicating that they have "heard this before," and disparaging the need for "review after review." This derision leads us to wonder if some members of the Board wish to expedite this process to a tidy end because they no longer have the wherewithal to hear public commentary or emerging new evidence regarding the safety of this project.

In regards to the above-mentioned report, and the notion of having already heard this evidence, we have scoured the public record relating to the Cloverleaf Project and see no previous testimony mentioning many of the recent studies cited in the erstwhile-named "Docs Report." This report has educated many of us on the perils to our drinking water, the Pond Village Aquifer, and the Bay. This report also notified us of a study accomplished in 2016 under the aegis of the Town that indicated that the BOH knew that Pond Village was one of the three "at-risk" neighborhoods for nitrogen overloading in the town. Subsequent to learning of the elevated levels of nitrates in PV, many of us have had our water tested with alarmingly dangerous results. Seemingly, it would be irrational to then to direct 2.8 million gallons of contaminated water to an area known by the Town to be "at risk." Since Health Risk = Dose x Duration, the estimated length of the Project is compounded by the assessed steady increases in nitrate concentration from the Cloverleaf waste-system. Thus, future generations will be subject to a larger dose for a longer period of time, and thus we are concerned not just for ourselves **but for our grandchildren**. If the Project has a 99-year life span, and it will take 2 years to build, the effluent will add to the neighborhood's health risk for roughly 97 years, thereby affecting approximately 4 generations of Pond Village residents.

We are were in shock to learn that in order to allow for the requested increase in size of the Cloverleaf Project, the ZBA must consider a risky and unproven pilot waste-water treatment system for the up-gradient Cloverleaf Project. As the word has spread through the neighborhood, more and more people have attended ZBA meetings. In each meeting many questions are asked by the Public and too often they are in-sufficiently answered by the team assembled by the ZBA.

I would ask the members of the Zoning Board of Appeals to examine their ability to consider new information with the energy and open-mindedness it deserves. We have 114 signatories on our last letter to you and the list is growing. Those 114 people are counting on you to "heed the science." If this is no longer within your "bandwidth," please slow this process down or recuse yourself from the remainder of these proceedings.

Thank you,
Karen MacDonald Ruymann
Bay View Drive

Zoning Board of Appeals

Town of Truro
Truro, MA 02666

Nov 2, 2020
via email

As residents of Pond Village have become more familiar with the latest sewage treatment plan proposed by the Cloverleaf applicant and presented in late August, we must wonder if all possible options have been explored and if there are systems other than the pilot treatment plant now proposed that would achieve better results. The plan presented just two months ago for a Small Wastewater Treatment Plant (SWWTP), a pilot system incorporating a BioMicrobics HSMBR 9.0-N, is the third iteration of a wastewater treatment plan, so it seems reasonable to ask if there are better options that would reduce the risk to Pond Village residents' health.

An important aspect of the sewage plant — aside from the treatment technology itself — is how the 2.8 million gallons/year of contaminated discharge is routed and/or managed. We know, per Horsley & Witten, that it will run downgradient through Pond Village and Pilgrim Pond toward the bay, past our wells. Is there some alternate means to discharge the output from the SWWTP? We understand now that the plume of discharge is more like a slow-motion shotgun than a rifle. It may miss some wells but may hit others more directly, as Horsley & Whitten acknowledged during the October 22 ZBA meeting. But it is not possible to know exactly which wells will be hit for about three to six years when the leading edge of the plume arrives under the most inhabited areas of the Village. Instead of discharging 2.8 million gallons per year through the groundwater, an alternative would be bypass our drinking water wells and pipe the effluent directly into the Bay. But such a solution would create new kinds of problems, so we don't see this happening. Another suggestion voiced earlier was to split the discharge so that some moved east to the Ocean and some moved west to the Bay. But again, this doesn't seem feasible.

So my question is simple: Are there any other improvements or alterations to the SWWTP and/or its discharge that can reduce the downgradient contamination and serious health risks to our community? Is a BioMicrobics HSMBR 9.0-N really the best solution possible? Is there anything else about the treatment plant that we and the Board should know to help us evaluate possible mitigation to the unquestionable health risks our community faces from this proposed sewage treatment plant?

Respectfully,



David Kirchner
P.O. Box 144
North Truro, MA 02652

Zoning Board of Appeals

Town of Truro
Truro, MA 02666

Nov 2, 2020

via email

Dear ZBA Chair and Members:

It has become obvious to many in Pond Village that we have serious issues and concerns about the potential impacts to our health and safety from the contaminated wastewater to be generated by the proposed Cloverleaf Project. We have therefore sought clarification from the applicant, the Town, and our own research to address and mitigate these concerns. Yet many of our concerns and questions remain unanswered.

We fully understand that in 40B applications such as this, the ZBA acts upon waivers of regulations that would otherwise be addressed by the Board of Health. Therefore, you, the members of the ZBA, are directly responsible for ensuring the health and safety of current and future generations of residents of the Pond Village watershed.

We understand that the ZBA is trying to do what it can but is operating in conditions under which it is understaffed by town management, i.e., in the absence of both a full-time planner and a full-time town manager, and with a health agent who is dealing with the serious consequences of the COVID pandemic.

Nonetheless, we need answers to the serious and complex questions we have raised in our previous letters, not only to ensure the health and well-being of those who currently live in Pond Village, but also to protect the generations that will follow us during the 99-year life of this project. We sincerely hope that these remaining questions can be addressed soon. They cannot be forgotten or ignored.

We have done what we can to provide the data needed to understand the facts to the best of our ability. We brought the Docs for Truro report on *Private Wells and Truro Safe Water* to the ZBA's and the developer's attention so that the science can be properly applied. We initiated a water testing program and have sampled more than 50 wells in the past three months — more wells in our neighborhood than the town has sampled in 10 years.

Importantly, our resident scientists and environmental professionals have been able to pitch in and analyze the data. We now know, as does the ZBA, that the current level of contamination is symptomatic of the Pond Village sub-watershed being stressed beyond its capacity to sustain even the current level of nitrogen loading from existing homes and from runoff from the Route 6 overpass and impervious surfaces upgradient from us.

We also now know that the Cloverleaf project as currently proposed will cause us great harm in the near- and long- term future if approved. But we gather some ZBA Members are not yet convinced of the risk and the realities we face from the proposed sewage plant and the impacts of the related waivers you are contemplating.

In 2016, when the original 12-to-16-bedroom Cloverleaf project was being planned, we voted for it in full support for those in need of affordable housing. However, this public hearing process has

alerted us to the realities and risks of the Select Board's decision to greatly enlarge the project and to build a 39-unit complex complete with parking for 80 vehicles, municipal water, a sewer system, a small wastewater treatment plant, and more residents per acre than the City of Boston.

A project of this size will generate wastewater at such a rate that no treatment technology apparently exists — not even the risky and minimally tested pilot system that has been proposed — that can safely handle the volume of sewage that will be generated. Added to the pre-existing nitrogen load Pond Village now carries, we are skeptical that the proposed wastewater treatment plant can reliably and consistently deliver the needed operating results over the 99-year life of the project to provide adequate protections to our drinking water and health.

It is for these reasons that we request an opportunity to summarize to the Board the issues that remain unaddressed, including new information that has come to our attention since the last ZBA meeting.

We will commit to preparing this for the ZBA by the next hearing continuation date, which we understand to be November 19. In a spirit of community participation and cooperation, we respectfully request that you allocate 30 minutes on your agenda to take stock of where we are in this process as it relates to our overarching concern for our health and safety going forward. Can we count on this time during the meeting? Please let us know so we can prepare an efficient and informative presentation for the Board.

Respectfully,

Members of the Pond Village Community
(Signatories on next page)

LIST OF POND VILLAGE SIGNATORIES

<u>Name</u>	<u>Street</u>
Vicki Abrahamson	Twine Field Rd
Terry Abrahamson	Twine Field Rd
Claire Aniello	Bay View Dr
Mauro Aniello	Bay View Dr
Nancy Bean	Shore Road
Patricia Bellinger	Pond Road
Harry Bogdos	Pond Rd
Nancy Boyles	Bay View Rd
Ronald Boyles	Bay View Rd
Elisabeth Bradfield	Professional Heights Rd.
James Brown	Bay View Rd
Julie Brown	Bay View Rd
Will Bullard	Pond Rd
Luther Bumps	Bay View Dr
Lora Bumps	Bay View Dr
Barbara Cardinal	Pond Rd
Robert Cardinal	Pond Rd
Camille Cardinal	Twine Field Rd
JanIs Christensen	Twine Field Rd
Richard Christensen	Twine Field Rd
Raymond Clarke	Priest Rd
Jil Clark	Bay View Rd
Sophia-Grace Clark	Bay View Rd
Sheila Coleman	Pond Rd
Carolyn Collins	Highland Rd
Barbara Connolly	Bay View Rd
William Connolly	Bay View Rd
Steve Corkin	Merryfield Path
Barbara Coughlin	Pilgrims Path
Robert Coughlin	Pilgrims Path
Janine Cote*	Priest Rd
Bryan Cote*	Priest Rd
Theresa Daigle	Bay View Dr
Tom DeFranco	Pond Village Rd
Francine DeFranco	Pond Village Rd
Glenna Descy*	Bay View Drive
Don Descy*	Bay View Drive

POND VILLAGE SIGNATORIES (con't)

Damian DeWolf	Bay View Dr
Shelly DeWolf	Bay View Dr
Roger Dias*	Pond Rd
Barry Donahoe	Paines Way
Denise Donohoe	Paines Way
Rob DuToit	Shore Rd
Ellen English	Pond Rd
Laura English	Pond Rd
Andy English	Pond Rd
Sam English	Pond Rd
Pamela Fichtner	Pilgrims Path
Ronald Fichtner	Pilgrims Path
Michael Gagne	Pond Rd
Kathy Gagne	Pond Rd
Jeanne Gaarder*	Hughes Rd
Joe Gareau	Pond Village Ave
Pauline Gareau	Pond Village Ave
Jim Gillman	Bay Village Rd
Sandy Gillman	Bay Village Rd
Nita Giordano	Twine Field Rd
Alan Giordano	Twine Field Rd
Jeff Goldenberg	Pilgrim Pond Road
Eric Goss	Pond Rd
Amy Graves	Francis Rd
Marne Hodgins	Pond Road
Tony Hodgins	Pond Road
Elizabeth Hulick	Shore Rd
Charles Hutchings	Sage Ridge Rd
Carolyn Hutchings	Sage Ridge Rd
Eric Johnson	Twine Field Rd
Gwen Kazlouskas-Noyes*	Pond Rd
Scott Kazlouskas-Noyes*	Pond Rd
Hank Keenan	Highland Rd
Mindy Kingston	Pilgrim Pond Road
David Kirchner	Twine Field Rd
Deborah Kmetz	Professional Heights Rd.
Mary Ann Larkin	Pond Rd
Mary Ellen Laughlin	South Highland Rd
William F Laughlin	South Highland Rd
Gail Lebowitz	Pond Village Ave.
Julia Bergmark Lester	Pilgrims Path
Dan Maddalena	Merryfield Path

POND VILLAGE SIGNATORIES (con't)

Jill Mays*	Priest Rd
Eric Mays*	Priest Rd
Matthew McCue	Bay View Rd
Paula Passi McCue	Bay View Rd
Jack McMahan	Professional Hts
Laureen McVay,	Amber Way
Marilyn Miller*	Pond Rd
Brigid Moynahan	Priest Rd
Chris Nagle	Pond Rd
Christina O'Brien	Shore Road
Patric Pepper	Pond Rd
David Perry	Pond Rd
Louise Fournier Perry	Pond Rd
Gigi Porges*	Hughes Rd
Janice Redman	Shore Rd
James Rudd	Priest Road
Jane Rudd	Priest Rd
Karen M. Ruymann	Bay View Dr
Frederick W. Ruymann	Bay View Dr
Mallory A. Ruymann	Bay View Dr
Lisa Sette	Professional Heights Rd.
Kathy Sharpless	Bay View Path
Gary Sharpless	Bay View Path
Jake Sharpless	Bay View Path
Ellyne Skove	Bay View Dr
Santina Smith	Bay View Dr
Frank Smith	Bay View Dr
Barry Tandler	Pond Rd
Suzanne Tandler	Pond Rd
Scott Warner	Twine Field Rd
Lesley Weller*	Bay View Dr
Lynn Williamson	Priest Road
Lee Williamson	Priest Road
Barbara Wolhgemuth*	Twine Field Rd
Diana Worthington	Pond Rd
Peter Burgess	Friendship Way
Karen Feldman	Turnbuckle Way

-
- Signatories to Oct 5 submission to ZBA. Unavailable at time of submission. Confirmation pending. Additional signatories will continue post-submission.

Elizabeth Sturdy

From: Pamela Wolff <wolff.pamela@gmail.com> on behalf of Pamela Wolff
<pamela@angel.net>
Sent: Monday, November 2, 2020 1:32 PM
To: Elizabeth Sturdy
Subject: Fwd: Cloverleaf

Hello Liz, Could you please add this letter to the ZBA packet for the Thursday meeting? Thank you, Pamela
>>>>

>>>> Not that it matters a damn, but here's what I think:

>>>>

>>>> I think the town of Truro is about to commit an irretrievable, catastrophic error.

>>>>

>>>> The ZBA, with every good intention, appears ready to go the whole nine yards and grant waivers for all of the 24 or so requests. Last week they approved the first five.

>>>>

>>>> This for-profit builder, a perfectly nice guy, will build his partially for-profit subdivision (call it what it is) on what may be the single most compromised parcel of land in Truro: topographically challenged, (one of the 24 or so waivers has to do with the road incline being too steep) and hydrologically challenged (the 3.9 acres site sits in the middle of the Highland outwash plain,) the flow from which Pond Village gets its drinking water.

>>>>

>>>> The proposed filtering system to clean up the domestic sewage from this completely inappropriate subdivision is in experimental stage, (they call it "pilot") being tested in three locations off-Cape where the soil conditions are quite different from ours.

>>>>

>>>> What are the consequences when (not if) this title 5 on steroids fails, and nobody notices for a few months? Twenty five years down the road where is the responsible entity, a private company, to be found? Sold, bankrupted, dissolved?

>>>>

>>>> Upon whose shoulders will fall the burden of cleaning up the super fund-like contamination of every well between route 6 and the bay along the Highland plume? That is a job that could take decades. As one ZBA member noted, it would make more sense just to abandon our precious aquifer and bring public water to every house in the Village. We would be paying for that, of course.

>>>>

>>>> If that same stream of water still flowed above ground every citizen along its banks would have riparian rights to clean water.

>>>> The developer is not responsible for notifying townspeople of failures in the system. It is up to the residents to do their own testing...at their own expense.

>>>>

>>>> Who the hell thought up the idea of bringing water piped from Truro to Provincetown and back again to this site in order to allow it to expand from 12-16 units to 39?

>>>> Please, bust it back to the original plan. Eliminate the urban apartment building. Avoid all of the additional bells and whistles required to make it viable.

>>>> I've read that 25 percent, or 10 units are all the state requires. The developer proposes four 1 and 2 bedroom units at the lowest income level, and seven 3 and 4 bedroom units at market rate, with a range of income levels in between.

>>

>>>> So if the economy shifts, does everybody realize that after all the struggle to squeeze this thing into that tiny site, the town might conceivably get only 10 units of affordable housing?

>>>

>>>> The thoughtful, careful detail oriented Boards of Truro have worked hard for four years on this problematic project. It's a great idea, looking to fill a great need. Scaling back the scope by eliminating the apartment building could still help fill that need and reduce the risk of jeopardizing our precious, irreplaceable water source.

>>>>

>>>> Pamela Wolff

>>>> Truro

>>>

>>>

>>>>

>>>

>>

>

First I want to re-affirm my total support for the 12-16 affordable units I thought I was voting for at Town Meeting, and to repeat that I believe 39 units poses a health and safety risk to the community, including the intended residents of Cloverleaf housing. I am concerned that the waivers being granted by the ZBA—because they are all supposed to be based on a determination by the Board that they are not and will not be a detriment to the community—may open the Town, as owner of the Cloverleaf parcel, and its taxpayers to future liability claims. The Town of Truro is the owner of the land. The Truro Zoning Board, acts on behalf of the Town of Truro and its taxpayers. It must do nothing to jeopardize the health and safety of its residents.

I ask that the Zoning Board consider the following:

Liability:

In the future, since the Town of Truro owns the land, and it would have been a Town of Truro Zoning Board that provided the waivers that made Cloverleaf Housing possible, could the Town of Truro be held liable for anything that might occur in the development?

If and when constructed, the buildings on the Cloverleaf parcel would be privately owned by Community Housing Resource, but on land publicly owned by the Town of Truro

The ZBA is a Truro Town Committee with members appointed by the Select Board.

If (1) the Town (ZBA) determines that the Cloverleaf housing development will not be detrimental to the health and safety of the community, and provides the waivers that make its construction possible; and if

(2) it is built and occupied; and if

(3) at some time in the future Community Housing Resource changes hands or ceases to exist altogether; and if

(4) something fails such as the waste water treatment system, or a fire that spreads to other properties; then

(5) who would be liable in the event of potential harm to the community or to an individual outside or within the Cloverleaf parcel?

Transparency:

What precisely are the Town's financial commitments and legal responsibilities and liabilities with respect to and in agreements with Community Housing Resource? Are all documents, agreements, and contracts between The Town of Truro and Community Housing available to the public, and if not, why not?