

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
ZBA MINUTES
MONDAY, AUGUST 24, 2015
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**

QUORUM PRESENT: B. Perkel (Chmn); A. Hultin; F. Todd (Clerk); J. Thornley, J. Allee, J. Dundas, Alt., N. Brown, Alt. Also present: S. Kelly, Recording Sec.

Meeting opened at 7:01 by Chairman Perkel.

Minutes of May 27, 2015 approved on a Motion by Mr. Thornley, 2nd by Mr. Todd, 6-0-1 abstained.

Continuation: 2015-006/ZBA – Mary Jane D’Astugues and Daniel F. D’Astugues, by agt/atty Benjamin E. Zehnder, for property at 13 Cooper Rd., Truro (Atlas Sheet 59, Parcel 1)(Reg. of Deeds title ref: Book 25840, Pg. 61). Applicants are appealing the decision of the Bldg. Com. not to grant a bldg. permit, and are also seeking a Special Permit w. ref. to Sec. 30.7.A. of the Truro Zoning Bylaw to construct an addition to a pre-existing, non-conforming structure, as per plans filed – as continued from the Meeting of July 27, 2015

Mr. Perkel designated the regular members as voting: Allee, Hultin, Perkel, Todd, Thornley. Atty. Zehnder explained the petition and noted they were seeking to overturn the Building Commissioner’s referral to the ZBA and noted he did not feel they needed a Special Permit; he added there was no sideline setback non-conformity issue; rather, the non-conformity was based on the under-sized lot status. In regard to the reasons why Atty. Zehnder did not feel a Special Permit was needed, Case law of Bjorklund and Branford were cited and relevant portions reviewed in regard to the intensification of non-conformity. Mr. Perkel noted the 14x18 addition conforms to the setback requirements and meets the requirements of granting a Special Permit. Mr. Hultin added the Truro Zoning Bylaw contains language which would indicate if the Building Commissioner does not grant a building permit, because he feels a Special Permit is required, the avenue would be appeal to the ZBA.

Atty. Zehnder explained under Sec. 30.7B, a Building Permit can be issued by instruction to the Building Commission to act as such; the ZBA interprets the zoning bylaw. He continued, the Building Commissioner wanted the ZBA to act and he referred to the case law example of Clark v. Wagner which was a Brewster case. He spoke of the 1975 Bylaw and noted they could not apply the later bylaw definition to a pre-existing structure. Reference was also made to C. 40A, Sec. 6 and the relevant Sec. of Truro’s Bylaw Sec. 30.7.B. was read, and Atty. Zehnder noted the ZBA could overturn the determination and make a Finding that one doesn’t need a Special Permit. Mr. Todd noted the language said ‘alteration’ rather than addition. Mr. Hultin asked about logistics and whether if the ZBA action were to overturn the Building Commissioner, would it not go back to the Building Commissioner and ZBA. Atty. Zehnder explained the ZBA could issue a Finding that a Special Permit is not required and thus the Building Commissioner can then issue a Building Permit. He added, this was germane to the street rather than the structure.

Members discussed the Bylaw as well as procedural ramifications such as the 20-day appeal period in relation to a decision by the ZBA, as well as the road issue. Members discussed the lot size which was 29,000 sq. ft. and in Bjorklund/Branford the size of the lot was a determination. Mr. Perkel suggested drafting a memo to the Building Commissioner with suggestions on referrals and applications; after further discussion on reaching a decision, the following Motion was made:

Motion (Thornley; 2nd Todd): Move in the matter of Mary Jane D'Astugues and Daniel F. D'Astugues, for property located at 13 Cooper Rd., (Atlas Sheet 59, Parcel 1), Reg. of Deeds title ref: book 25840 Page 61(2015/006), to grant a Special Permit w/ref. to Sec. 30.7.A of the Truro Zoning Bylaw to construct an addition to a pre-existing, non-conforming structure, w/ref. to elevations and floor plans by Cape Associates, Inc., entitled A1,A2,A3,A4,A5. The ZBA Finds there is not an increase in the non-conformity and said grant is not substantially more detrimental to the neighborhood and is in keeping with the intent and purpose of the Truro Zoning Bylaw.

Voted in Favor: Perkel, Hultin, Todd, Thornley, Allee. Voted Against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

Continuation: 2015-010/ZBA – Michael Tribuna, for property at 7 Parker Dr., (Atlas Sheet 39, Parcel 171). Applicant is appealing the decision of the Building Commissioner to issue Notice of Zoning Bylaw Violation and Order to Cease, Desist and Correct, as continued from July 27, 2015. Chairman Perkel noted they had received a request from Mr. Tribuna's attorney to continue the petition to the September meeting. A Motion was made by Mr. Perkel, 2nd by Ms. Allee to continue the appeal to September 28, 2015 at 7 PM at Truro Town Hall. 5/0, Unanimous to Continue.

2015-011/ZBA -- Linda Noons Rose and Jeffrey Rose, for property located at 4 Bayberry Lane, (Atlas Sheet 47, Parcel 64), (Certif. of Title Number: 186516), (Plan # Lot 20, 31205E). Applicant is seeking a Special Permit w/ref. to Sec. 50.1, (minimum lot size) and Sec. 30.7A. of the Truro Zoning Bylaw for an addition to a pre-existing, non-conforming structure as per plans filed.

Mr. Hultin recused himself from the hearing and Mr. Dundas would be voting.

Ms. Noons Rose explained they wished to construct an 11x15 ft. addition to the house which was on a lot they had purchased in the 1970s. In response to a question on the proof of the lot existence, Mr. Brown noted this was part of the Keller subdivision which was created in 1972. Members reviewed the addition plans, and since there were no further questions, the following Motion was made:

Motion (Todd; 2nd Allee): Move in the matter of Linda Noons Rose and Jeffrey Rose, for property located at 4 Bayberry Lane, (Atlas Sheet 47, Parcel 64), (Certif. of Title Number: 186516), (Plan # Lot 20, 31205E), to grant a Special Permit for an addition to a pre-existing, non-conforming structure, w/ref. to Sec. 50.1, and Sec. 30.7A. of the Truro Zoning Bylaw and w/ref. to Felco, Inc. Site Plan dated 7/8/15 and proposed addition plans by Alan Cabral (ARC Designs, LLC). The ZBA Finds said proposal is not substantially more detrimental to the neighborhood and is in keeping with the intent and purpose of the Truro Zoning Bylaw.

Voted in Favor: Perkel, Thornley, Dundas, Todd, Allee. Voted Against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

Next Meeting Monday, September 28, 2015 at 7 PM at Town Hall.

Meeting adjourned at 7:45 PM.

Respectfully submitted,

Susan Kelly
Susan Kelly

