

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
MONDAY, JULY 18, 2016
6 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**



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

Continuation -- Remand: 2014-008 – Habitat for Humanity of Cape Cod, Inc., by Atty. W.H. Brodie, for property located at 181 Rte. 6, (Atlas Sheet 51, Parcel 66). Applicant is seeking a Comprehensive Permit under MGL C. 40B, §s 20-23 & 760 CMR 56.00 for a 6-lot proposal which includes building three new affordable homes on 3 lots as per plans filed-- as continued from June 27, 2016.

It was noted there had been a request to continue and approval for an extension had been received from the Land Court; therefore a Motion was made by Mr. Hultin; 2nd by Mr. Thornley to continue the hearing to August 22, 2016, and approved by unanimous vote.

2016-012/ZBA – R. & E. Rice, for property located at 3 and 5 Great Hollow Rd., (Atlas Sheet 42, Parcel 237-3)(title ref: book 17077, Page 184). Applicants are seeking a modification to a Special Permit w/ref. to Sec. 40.3. of the Truro Zoning Bylaw for an updated plan that includes removal of unit 4 and addition to unit 3 (Whitman House Business Condos/Cottages), per plans filed.

Since a request for a continuation had been sent by the applicants, a Motion was made by Thornley, 2nd by Hultin to continue the petition to August 22, 2016 at Truro Town Hall at 6 PM; 5/0, unanimous vote to continue.

2016-010/ZBA – Adventure Bound Camping Resorts, for property located at 67 S. Highland Rd (Atlas Sheet 37, Parcel 15) & 10 Old Dewline Rd. (Atlas Sheet 37, Parcel 19)(Reg. of Deeds title ref: Book 26095, Page 3). Applicant is appealing the May 4, 2016 Order of the Building Commissioner, and is also requesting a Special Permit w/ref. to Sec. 30.7.A. of the Truro Zoning Bylaw for work related to construction and installation of state-mandated sewage treatment facility, per plans filed.

A request for a continuation had been sent by the applicant; a Motion was made by Thornley, 2nd by Hultin to continue the petition to August 22, 2016 at Truro Town Hall at 6 PM; 5/0, unanimous vote to continue.

Other Business:

Minutes of Dec. 7, 2015 joint meeting with Planning Board approved on a Motion by Mr. Hultin; 2nd by Mr. Thornley; 5-0-1 (Brown abstained).

2016-011/ZBA – G. Vaida & S. Abi-Younes, for property located at 29 Great Hills Rd., (Atlas Sheet 53, Parcel 12)(title ref: Book 15923, Page 241). Applicants are seeking a Special Permit w/ref. to Sec. 30.7. of the Truro Zoning Bylaw (& w/ref. to 2014-021 decision) to construct a retaining wall within the setback per plans filed;

Mr. Vaida explained they wished to construct the retaining wall, which would conform to setbacks for a lap pool on their property; members reviewed plans and were told the applicants had been advised by the building commissioner to construct the wall to retain the soil.

In response to a question about the guest house/bath house, Mr. Vaida said the bath house and garage had previously been approved. Mr. Hultin noted retaining walls don't meet the setback; however pool walls meet the setback. Ms. Abi-Younes provided further information on the proposal; she noted they had received necessary approval from the Conservation Commission. Members discussed retaining walls and sustaining walls; said sustaining walls retain an artificially-created grade and have to comply with zoning requirements. Mr. Hultin asked about the special permit application and why they were not asking for an extension of a non-conformity; Mr. Braun explained about the previously non-conforming lot.; they could say they were creating a new non-

conformity or they could look at approval by Special Permit as opposed to grant of a Variance. In response to Mr. Thornley's question on height of the wall, it was explained there will be a fence surrounding the patio area; height of fence will be 10 ft. at the southeast corner; members reviewed plans and spoke about the grade of the patio; it was noted the sustaining wall request was similar to a ZBA petition that was approved about a month ago.

Mr. Perkel asked for comments from anyone in opposition; there were none.

Members discussed plans further, noting they would like to see elevations showing the wall with a side view which showed the wall height. They then agreed to a continuation in order to receive additional information, including the type of fence; there is a height range from approx. 4 ft to 10 ft at the southeast corner; setbacks should be shown as well.

The Motion was made by Mr. Todd, 2nd by Mr. Perkel, to Continue the hearing to August 22, 2016 at Truro Town Hall. 5-0, Unanimous.

2016-009/ZBA – Fisher Road Realty Trust, by Atty. Christopher Snow, for property located at 9B Benson Rd. (Atlas Sheet 53, Parcel 50), Regis. of Deeds title ref: Book 22682, Page 84). Applicant is seeking a Variance w/ref. to Sec. 10.4 (Definitions). of the Truro Zoning Bylaw for construction of a road with a 12-ft. width, 2-foot shoulder width and intersection curb radius of 0 ft., per plans filed.

Chmn. Perkel noted those voting would be Perkel, Dundas, Hultin, Brown and Todd; Mr. Thornley recused himself; Ms. Allee was not present to vote.

Mr. Perkel noted he was concerned with the issue of ZBA standing in relation to the petition.

Atty. Snow asked if any members were affiliated with the Conservation Trust; there was no one; he then asked that any recused member not sit at the table; Mr. Thornley complied.

Atty. Snow said he would comment on Chairman Perkel's question on standing and provided background on the petition including Judge Piper's involvement in the Planning Board litigation at the site. He said members of the trust (Fisher Road Trust) had owned the land since 1978; the predecessor owned Benson Road, and the trustees had a deeded right-of-way and have paid taxes on this property as well; in 1978 they originally sought to subdivide and this commenced the land court action in 1998; the Caters have the right of way to Benson Road; this Land Court action subsequently resulted in an appeal to the SJC (Supreme Judicial Court). In June 2012 the SJC upheld the judgment of the Land Court and remanded the matter back to the Land Court. The Land Court issued its "Decision Directing Entry of Amended Judgment Following Remand From Supreme Judicial Court" and an "Amended Judgment After Rescript" was issued Feb. 2013.

Atty. Snow continued, the applicants wished to comply with zoning and referred to the Court finding of interest in the land, construction of a driveway or roadway not to exceed 12 feet in width; finished grade equal to or greater than 10%; it also spoke of drainage features, etc. In summary, there were two proceedings to the Land Court and an appeal to the Supreme Judicial Court (SJC); this resulted in their need to seek relief from local boards to accommodate the Land Court Judgment. Atty. Snow explained the petition for zoning relief which could result in either awarding "relief" to the applicants or subsequent appeals back to Judge Piper. There had been a period of eighteen years of litigation with the Land Court and SJC.

Chairman Perkel spoke of ownership interest in the driveway/road and noted he was troubled by this issue; he spoke of the grant of a Variance which would be in essence one foot on either side of the roadway and he did not recall any past experience of a property owner seeking to get a variance/relief on land he did not own or have a fee interest. It was noted the Land Court judgment speaks in terms of tradition and does not seem to address property rights; a right-of-way runs with the land; Mr. Perkel was not sure a non-property owner can expand a right-of-way; he was not sure they could decide this issue; Atty. Snow noted the Caters have "ownership" for the purposes of receiving 'permission' from ZBA and Planning Board; he continued, the ZBA



is a regulatory board and he spoke of the actual plan for the road; he disagreed with the non-standing status suggested by Chmn. Perkel.

It was suggested a continuation to the August 22 meeting would be appropriate in order to get an opinion from Town Counsel. A Motion was made by Mr. Hultin, with a 2nd by Mr. Dundas to Continue the hearing to August 22, 2016 at 6 PM at Truro Town Hall. 5/0 Unanimous for Continuation.

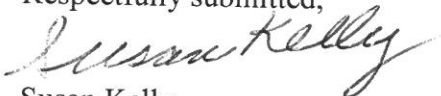
OTHER BUSINESS

Members voted to adopt "ZBA Rules Regarding Review Fees," which gave the ZBA the authority to have the applicant pay for consultants' fees, on a Motion by Mr. Perkel, 2nd by Mr. Brown, unanimous.

Next Meeting: August 22, 2016 at 6 PM at Truro Town Hall.

Meeting adjourned at 7:05 PM.

Respectfully submitted,



Susan Kelly