

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
MONDAY, AUGUST 22, 2016
6 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**



QUORUM PRESENT: B. Perkel (Chmn); A. Hultin (V. Chair); F. Todd (Clerk); J. Thornley; N. Brown, (Alt.); J. Dundas, (Alt) (Absent: J. Allee); Also present: S. Kelly, Recording Sec.
Also present: Town Counsel Jamie Veara, Planner Carole Ridley

Chairman Perkel said he would change the agenda order to hear the final petitions first.

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.

Atty. Nagle, representing Adventure Bound Camping Resorts, asked to provide a brief update. Since there was a Site Plan review by the Planning Board which was a requirement in relation to the Stop Work for the site. There was a time waiver request until August 22, 2016, and they were asking for an additional waiver request to December 6, 2016. If the Planning Board acted favorably, ZBA approval becomes “moot” since the appeal of said Stop Work Order would no longer be an issue.

A Motion was made by Mr. Brown, 2nd by Mr. Hultin to continue the petition to November 28, 2016. 6/0
Unanimous.

Atty. Nagle continued, the survey had been completed for PB Site Plan Review; Wilkinson Ecol. had been hired for a restoration plan at the site; there was a pending request for a growing plan to protect and preserve the vegetation, and they will be making the request again. They were anxious to get the restoration work started and had also contacted the National Heritage group regarding species relevant to the restoration process. Chmn. Perkel noted it was sufficient to know the applicants were pursuing remediation of the issues at hand.

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, as continued from July 18, 2016.

Mr. Vaida and Ms. Abi-Younes were present with David LaJoie from Felco Engineering. They explained the plans with the garage had been revised and there was no longer a sustaining wall, and therefore they were only requesting a special Permit for the pre-existing, non-conforming lot aspect for the garage/bath-house project. Mr. LaJoie explained the pool at the property would have a safety fence around it; also, the applicants had appeared before the ZBA 2 years ago for the garage modification; there will be a new driveway on the south side; that side will need stairs going down as well as stairs going up to the patio and garage; approval from the Conservation Commission had been received as well.

Members reviewed the plans; Mr. Hultin asked about the sustaining wall; it was explained the revised plan for the wall meets the setback requirements. Since there were no further questions from the Board members, the following Motion was made:

Motion (Hultin; 2nd Thornley): Move in the matter of George A. Vaida & S. Abi-Younes, for property located at 29 Great Hills Rd., (Atlas Sheet 53, Parcel 12 (2016-011) to accept the non-conforming extension of a non-conforming lot and to Grant a Special Permit w/ref. to Truro Zoning Bylaw Sec. 30.7.A., and Sec. 50.1, to construct a pool, bathhouse and pool patio on a pre-existing, non-conforming lot (w/ref. to ZBA decision 2014-021) as per Felco, Inc., Site & Sewage Plan, with the most recent revision of 7/29/16, “Detail Sketch” dated 8/9/16 and “Pool View Detail” dated 7/27/16, as filed with the ZBA. The ZBA Finds said Special Permit is not substantially more detrimental to the neighborhood and is in keeping with the general purpose and intent of the Truro Zoning Bylaw. Voted in favor: Dundas, Thornley, Perkel, Hultin, Todd. Voted against: None. Motion Carries: 5/Yes; 0/No, Unanimous.

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.

Mr. Rice explained there had been changes proposed, under Phase 1 on the Site Plan; there were no plans for a Phase 2; they would like to add a bedroom to unit 3. This was a modification to a previously-issued Special Permit.

Members reviewed the plans and since they did not have any issues with the proposal, the following Motion was made:

Motion (Todd; 2nd Hultin): Move in the matter of Robert and Elena (R&E) Rice, for property located at 3 and 5 Great Hollow Rd., (Atlas Sheet 42, Parcel 237 (2016-012)(Whitman House Business Condos/Cottages) to Grant a Special Permit for the elimination of Unit 4 and addition of 2 bedrooms to Unit 3 w/ref. to Sec. 40.3 and Sec. 30.8 of the Truro Zoning Bylaw w/ ref. to existing and proposed site plan by J.C. Ellis Design, dated 3/1/16, filed with the ZBA. The ZBA Finds said Special Permit is not substantially more detrimental to the neighborhood and is in keeping with the general purpose and intent of the Truro Zoning Bylaw.

Voted in favor: Dundas, Thornley, Todd, Hultin, Perkel. Voted against: None. Motion Carries: 5/Yes; 0/No. Unanimous.

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, §§ 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 and July 18, 2016.

Habitat representatives present were Atty. Brodie, Engineer O'Reilly and Rep. Zola.

Waivers discussed previously were noted: the height issue; as well as the consequences of a "50-year flood," and drainage and slope issues. The Town had retained Ryder and Wilcox for input on the proposed project and the relevant document had been prepared on the "Adequacy of Proposed Stormwater Measures" dated July 8, 2016, in response to the aforementioned issues. Said Ryder and Wilcox opinion had resulted in site plan revisions made by J. M. O'Reilly (submitted 8/2/16) which included the stormwater runoff plan. After a short recess, Mr. O'Reilly spoke of the Aug. 18, 2016 Ryder & Wilcox response letter; he noted plans were shown which addressed the runoff issue. Mr. Perkel spoke of the Ryder & Wilcox comments about the long-term maintenance plan and designation of a homeowner's association. Representative Zola explained the procedure and responsibility of said homeowner's association, noting they would be the responsible entity and the ZBA would be welcome to address the homeowner's association agreement details. She spoke of membership, fees and professional management by the homeowner's association; she stressed involvement is very important in the association; fees are set and they build up a reserve from the fees.

Atty. Reid, representing abutter Connors, spoke. He spoke of the report submitted by Gary James of James Engineering, Inc. regarding the adequacy of design. Site design was discussed and it was noted site visits by counsel and the judge had resulted in an observation of a "precipitous slope." He noted if there were a 6-ft. sustaining wall there wouldn't be room to access the septic systems and room for the catch basin in the lower section next to the parking was an issue; on the issue of the driveway location, if there were a need for repair or replacement of the septic system, it would be undermined. He also spoke of nitrogen loading requirements, sediments in runoff and adequacy of a turnaround for fire engines. He concluded this was a difficult site to deal with and the design doesn't address concerns for safety, etc. Engineer James spoke and reiterated this was an extremely difficult site; stormwater compliance management, maintenance of catch basins, ie: keeping them free from sediment, would be issues; he spoke of 100-yr. and 50-yr storm events, as well. Ms. Connors spoke about the project; she noted she was committed to Truro and affordable housing; however, she felt there was a rush to develop this particular project and she felt the Board needed to weigh everything for their decision.

ZBA members were asked for comments; Mr. Todd said he would like to hear more from the Ryder & Wilcox engineer; Mr. Hultin had no further questions at the time. Ryder and Wilcox Engineer Bersin spoke of the analysis of the adequacy of stormwater runoff; she spoke of the revised plan and noted it seemed the runoff down slope, post-development, will be reduced; regarding septic system access, it had been noted the drywall relocation met Title 5

setback requirements; her comments had been documented in the aforementioned letter of Aug. 18, 2016. Mr. Thornley spoke of slopes 1 and 2 and noted stabilization during construction could be done. Mr. Brown spoke of ongoing concerns on post- construction maintenance. Members also discussed the pitch of the parking area, and noted although this was difficult site, issues can be addressed.

Atty. Brodie, of Habitat, spoke of the drainage calculations and responded they were not "marginal" as opined; rather they were more than adequate, and he gave an example of drainage area 1; these drainage requirements had been analyzed by Ryder & Wilcox and found to be adequate. Engin. O'Reilly spoke of drywells at #2 and #3 and the slab at building #3 – the bottom of the pit is 2-3 ft. below; the site will be excavated for the foundation; they opted not to go with the Ryder/Wilcox suggestion because of the height of the building, lot pitch, etc.

Site work was discussed further including requirements mentioned from the Mass. Stormwater handbook; it was noted the 4 homes were exempt from meeting said requirements; those Stormwater requirements dealt with large-scale subdivisions. It was noted the plastic tanks could be used in septic system work and there are mechanisms to deal with the siting of buildings 2 and 3. Excess sediment could be removed and the property manager would be responsible for addressing any issues with said catch basins; it was noted the stormwater plan had been addressed and included plantings involved, etc.; furthermore, some issues are addressed in documents filed with the EPA. In response to a question on the dashed lines on the plans, it was noted these denoted limit of work area and a secondary line of work area.

In addition, a fire vehicle could back out of the property; Ms. Zola noted although this was a difficult site, it is not the most challenging site they have ever worked with. Engineer James spoke of the road elevations and design standards and the subsurface filtration system. After further discussion Chairman Perkel spoke of the water management plans, height and any additional comments. Mr. Hultin asked if there were any response to the suggestion of lowering the roadway and changing drainage. Mr. O'Reilly noted they had looked at alternatives and also spoke of drywalls and catch basin issues with possibility of placement on each side of the road; however, he felt lower and upper sites will provide adequate catch basins. In response to a question about a lower roadway, Mr. O'Reilly replied they opted to keep the design as it is.

After a 10-minutes recess, Chmn. Perkel noted he did not think they were able to draft a decision; to expedite the clarity of the decision, he recommend they close the evidentiary portion and meet at a later date for this one-issue consideration. Atty. Reid had no objection to a continuation; scope of remand was reiterated – all issues relating to the grade of slope, site and stormwater drainage.

A Motion was made by Mr. Hultin to Continue to August 29, 2016 at 7 PM at Truro Town Hall, with a 2nd provided by Mr. Thornley. Unanimous to continue, 5/0.

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, as continued from July 18, 2016.

It was noted Town Counsel had made a determination on the standing issue. Atty. Snow, representing the applicants, said the issue at hand was the result of 18 years in the Land Court; jurisdiction had been retained by Judge Piper. In response to Atty. Snow's question on those members voting, members Dundas, Brown, Perkel, Hultin and Todd would be voting. Member Thornley stepped down from the hearing. Members were polled on whether they had any interest in the Truro Conservation Trust; response was: Todd: no; Hultin: no; Brown: no; Perkel: no; Dundas: no. Atty. Snow said they were asking for a Variance, and spoke of width and curved radius of the road; he added, Dr. and Mrs. Cater were present with their engineer. Atty. Snow continued with background on the property: the Caters had paid taxes on the property as a residential lot and referred to the Supreme Judicial Court (SJC) and Judge Piper's ruling which decreed ownership and directed the Caters to seek applicable permission from the Planning Board; although the Planning Board could not waive the width requirements, he felt the judge's decisions are lengthy, well-thought out and with good reason. He felt the judge wanted to allow the Town of Truro to proceed through the

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waiver/variance route without judicial oversight; he felt the judge thought the road would serve as access to one single-family lot.

In response to Mr. Perkel's question on the area involved in the Variance request, Atty. Snow said this was a 20-ft. radius; they can't conform to that 20-ft. radius with a 15-ft. radius and he spoke of the impossibility of conformance to that 20-ft. radius requirement. He referred to C. 40A, Sec. 10 in Mass. Zoning law and said there were land-related circumstances beyond the control of the applicant; the shape, soil conditions and topography of the land gave rise to Judge Piper's decision; the least impact would be a straight line of 12 ft.; soil conditions require width to be narrow; a literal enforcement of the bylaw would be a financial hardship; further expansion of the road would not be in the best interest of the residents; road standards apply to much larger subdivisions. Chmn. Perkel noted the judge was referring to a Single Family residence (SFR) and asked how this applied to this section (of the road). Atty. Snow explained there would be protection of soil conditions – the instability to the hill area is the "soil condition."

Atty. Perkel noted they were faced with a variance request on a piece of property the applicant did not own; there is a right of passage for the applicant, but he felt it is beyond the board's authority to take 2 more feet under consideration. The judge had provided the Planning Board with the option to approve or not approve the roadway. Mr. Todd felt it was not for the ZBA to overrule the Planning Board decision. Members then discussed their role and that of the Planning Board; it was explained the Planning Board's original negative determination was based on their feeling they did not have authority to address because they were not dealing with a subdivision. Atty. Snow noted if they are denied, it would go back to Land Court.

Members discussed their authority with the issue at hand; Town Counsel opinion (by KP Law) was discussed; Mr. Perkel spoke of the section which says they cannot grant a variance with no frontage; Mr. Hultin referred to the 12 ft. measurement with 2 ft. on either side; Atty. Snow cited the KP law and the Judge's opinion, and noted they were asking for a variance for width.

Mr. Perkel asked for anyone opposed to the proposal. Those in opposition were: Ferrier, Power, Loffredo, Hershkoff, Kiernan, Holt and Clark.

Mr. Perkel asked for comments in support: Mrs. Cater spoke and noted they had rented since 1982; the issue had gone from Land Court to the SJC to Land Court, the Planning Board and now the ZBA; it had been a long process.

Mr. Perkel noted there was merit toward granting a variance; and spoke in reference to the grant and being without detriment to the public good. Conservation Trust representatives Royka and Smith said although they appreciated this has not been fair to the Caters, it has not been fair to the Trust either. Mr. Hultin asked why the Caters could not use the easement to access their land to build a home. Mr. Kiernan provided background on the lot and easement and said they had been denied twice previously. Atty. Snow explained the judge had awarded an easement; he continued the Caters intend to avail the rights awarded by the Court; he contended they met the requirements of the Subdivision Control Law.

Resident Holt spoke and said she wanted to go on record – she had a lot of respect for the law; she felt the property was inherently flawed and there are 2 easements that are flawed; she felt sorry for applicants and asked if a driveway is considered a street. After Mr. Poole, a surveyor spoke, Mr. Perkel noted he would close the evidentiary portion of the hearing, and ZBA members would discuss the petition.

Mr. Perkel noted he had concerns with granting a Variance; Mr. Todd said his concern was how the ZBA could grant a Variance; Mr. Hultin spoke of the wording on soil conditions or topography. The property was landlocked with an easement by deed; the lot did have a unique shape. Easements, street and road definitions were discussed. Mr. Brown noted he would rather see the issue adjudicated here rather than in Boston, and said it was an opportunity to affirm the issue 'locally.' Mr. Dundas concurred. Mr. Perkel felt it didn't become unusual because of shape; he spoke of domain by fee simple ownership of the lot – one owns up to the edge of the easement in fee simple, ie: the resultant "right of passage." Mr. Hultin said they need an approved plan to get a permit; the reply was it is consistent with the judgment – 12% and 10% grades were mentioned.

At this point a recess was taken (9:50 PM) and deliberation resumed at 10:3.

Mr. Brown proposed a Motion to grant a variance; 2nd by Mr. Perkel. Under discussion, Mr. Perkel noted he didn't feel the ZBA was authorized to act on this motion; Mr. Brown did not feel it met the requirements for granting a Variance; Mr. Perkel said they needed clarification on Findings. Mr. Hultin spoke favorable and said it gives the ZBA an opportunity to make the decision. Members also discussed need for Findings as to what is the road/plan. Mr. Todd said he was not seeing grounds for granting a Variance and would like to see those grounds. (ie: Soil/Topography/Shape of Lot). Under further discussion, Mr. Perkel noted, although there is equity in favor of the Caters, the problem is variances are rarely granted; he felt Judge Piper said the Planning Board has authority to rule and he felt the ZBA did not have the authority to address. Mr. Dundas said he would be amenable to a continuation to frame a motion; Mr. Brown said he was willing to withdraw his Motion.

After Further discussion, the following Motion was made:

(In regard to: 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, as continued from July 18, 2016, the following Motion was made):

Motion (Brown, 2nd Perkel): In the case of 2016-009 Fisher Road Realty Trust I move to grant a variance from the terms of the applicable provisions of the zoning ordinance or bylaw where such permit granting authority specifically finds that owing to such circumstances relating to the soil conditions and topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.

(Vote: In favor: Brown, Dundas, Hultin; Against: Todd, Perkel.)(3/2, Motion does not Carry).

OTHER BUSINESS

Next Meeting: August 29, 2016 at 7 PM at Truro Town Hall.

Meeting adjourned at 10:20 PM.

Respectfully submitted,

Susan Kelly