ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
JANUARY 23, 2017
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO

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

Meeting convened at 7 PM by Chairman Perkel. He noted he would like to put the Adventure Bound appeal last on the agenda and start with the Rybeck/Siniscalco and Shea/Richland appeals. He said these were parallel issues and he would like a summation.

2016-017/ZBA – Kevin Shea and Judith Richland, for property located at 408 Shore Rd. (Atlas Sheet 10, Parcel 41, Reg. of Deeds title ref: Book 7711, Page 069). Applicants are seeking a Variance w/ref. to Sec. 50.1. of the Zoning Bylaw to construct a single-family residence on a pre-existing non-conforming lot which also lacks the required frontage, as per plans filed.

Atty. Snow, representing Shea/Richland, spoke and noted he felt there were different issues at hand. He provided history on the property noting a number of letters had been received in support of the proposal and he did not have any letters of opposition. He said they were asking for a Variance for the property which Mr. Shea had owned for 26 years; there were 4 separate cottage on one side of the property and the former Fore'N Aft property had eventually been condemned. Originally there was one lot at the site; now, there were two separate lots. He continued, permits had been obtained from the ConCom for the bulkhead at the Shea site which showed the intent to upgrade the property; the septic system had been upgraded, and he referred to a Nov. 28, 2016 BOH memorandum, which allowed the applicants to proceed in seeking a variance from lot size and frontage. He provided further background: lots were combined at 402 Shore Road; however, 408 Shore Road was set apart from there. He explained that area of Beach Point is a 1.2 – 1.4-mile area with motels and cottage colonies which was so unique, it needed a separate zoning district designation; residential uses were not considered originally because there weren't many (or any) single-family residences there and unfortunately, lot size and frontage were issues that were never addressed in this (Beach Point) area. Atty. Snow noted this site is well below the standards which are present in Beach Point (ie: a lesser use of the site), and he spoke of the uniqueness of the lot, and spoke of the hardship of "paralysis" of use on the property in that taxes have been paid for the property for 20+ years. They are proposing to utilize a use that should be promoted in this area (ie: less intensity of use of the property). Atty. Snow summarized by mentioning the unqiue circumstances of the site; stabilization of the area by the proposed project; and protection of the property across the street by building a sfr; he said this analysis renders the conclusion a Variance is in order. Mr. Shea mentioned the PB ANR plan, and the meeting moved on to questions by ZBA members. Mr. Hultin asked about the former motel site and maintenance of the sea wall. Members did not have any other questions; Mr. Perkel said this was a unique situation and while he had no particular questions, he felt a Variance could be warranted. Members discussed Conditions on a decision and Mr. Perkel read names of those abutters who had sent in letters of support and those of two residents who were not in support. Members discussed draft findings and spoke of requirements for a variance; it was noted two lots were created by the Planning Board by ANR some years ago.
The ZBA concurred they would review proposed findings and make a Motion at the end of the meeting.
(At the end of the meeting, after discussing proposed Findings, the ZBA made their Motion).

Continuation: 2016-013/ZBA – Barbara Rybeck & Joan Siniscalco, by Atty. Kevin M. Kirrane, for property located at 402 Shore Rd., (Atlas Sheet 10, Parcel 22)(title ref: Book 13530, Page 012). Applicants are seeking a Variance w/ref. to Sec. 50.1 (lot size) and Sp. Permit(s) w/ref. to Sec. 30.2 and 30.7.A. of the Zoning Bylaw to raze and replace a motel & use & structure with a new Single Family Residence, as per plans filed, as continued from Oct. 24, 2016.

Atty. Kirrane was present with the applicants to explain the petition, noting they were seeking relief in the form of a Special Permit for an alteration to a non-conforming structure; the proposed single-family residence replaces the old Fore'N Aft Motel with a structure which is one-half the size of the motel; he added, the Conservation Commission and Board of Health had approved the proposel and they have revegetated the site. He referenced Variances and Sec. 81L of C. 41 (Mass. Subdivision Control Law) and with this reference, noted they could build by right; in essence they were constructing a lot around a building that predates zoning; the lots did not comply with zoning and a substantial amount had been spent on the lot. He continued, the Board of Health had approved the septic system for the site; the site was 19,000 square feet, which is much larger than most lots in the Beach Point area; the balance should be in the finding this proposal is not substantially more detrimental to the neighborhood, and is in keeping with the intent of the Bylaw. He added, the lot does meet the frontage requirements. In response to a question about height and whether the variance considered house plans. Mr. Todd asked about plans and he noted he wanted to be clear on what exactly they were voting on in terms of plans. Questions were raised on the sea wall and pictures of the site were shown with the foundation and relationship to site of beach grass growth.

At this point, Planner Ridley introduced Town Counsel Silverstein, who would answer any further questions regarding the 81L aspect of the Subdivision Control Law. Atty. Silverstein explained the SJC rejected the 81L argument, and noted the ref to 81L does not exempt a property from compliance with zoning regulations; he added, if the ZBA granted a Variance, they can impose Conditions on said Variance.

Mr. Todd asked whether applicants should go to the PB for an ANR and Mr. Hultin asked about the "dune created" and how high it was. Atty. Kirrane said the pile-driven foundation is 6 ft. off the ground; the remnants of the dune are on the south side of the property and he also provided information about the dune at the front of the property. Members reviwed the plans and elevations; it was explained the design is such that the air will go through and the dune will build up naturally. Letters of support were noted for the record.

It was noted the final decision would be framed and voted at the end of the meeting and a short recess was taken; 8:20. Meeting resumed at approx. 8:40 PM.

Continuation: 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 Stop Work Order of the Bldg. Com., 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, as continued from Aug 22, 2016, Nov. 28, 2016.

Prior to hearing the Walsh petition, Chairman Perkel noted the receipt of the request for a continuation for Adventure Bound. A Time Waiver was signed and a Motion was made by Mr. Hultin, 2nd by Mr. Perkel to continue the Appeal to March 20, 207 at 7 PM at town hall. 4/0, unanimous to continue. (Mr. Brown had stepped down)

2016-019/ZBA – Stephen Walsh, by agt/rep Chester N. Lay, Slade Assoc., seeks a Variance and Special Permit w/ref. to Sec. 50.1.A and 30.7.A of the Zoning Bylaw for setback nonconformities created by a proposed definitive subdivision under review by the Planning Board, for property located at 5&0 Walsh Way, Atlas Sheet 43, Parcels 134 & 135).
Since Mr. Brown stepped down from the hearing, four members would be hearing the appeal.

Mr. Lay of Slade Associates was present to explain the petition; he provided information on the Preliminary Subdivision plan which went to the Planning Board for approval; he explained they were waiting for the ZBA outcome before further application to the Planning Board. He explained, the widening of the road creates a new non-conformity; there would be 4 ½ inches and 1 ½ inches of intrusion into the setback. It was explained there was a reference to an Aug. 1994 plan submitted to the Planning Board with Walsh Way and Valentine La;

there were also deed references to plans of 1921 and 1946; the purpose in 1994 was to show the road for planning purposes (ie: a paper road). Mr. Lay continued they needed a variance for the garage and there was no widening on the east side except on the northeast side; there is no more non-conformity to the lot; the plan will be under review by the Planning Board and he explained, the shaded area on the plan is under question; they are requesting a Special Permit so they can go back before the Planning Board. In response to Mr. Perkel's question on granting relief under Sec. 30.7A and the grandfathered aspect, it was explained there were setback issues with lots 2 and 3 created by the new layout; they were not creating any increased non-conformity at the site, however; they were widening Valentine Lane on the left side so they would thus need relief because this results in more of a non-conformity. They were requesting a variance only for lot 2 and a Special Permit. After further discussion, a Motion was made by Mr. Todd to continue to Feb. 27, 2017, 2nd by Mr. Perkel, 4/0 Unanimous to continue.

2016-21/ZBA -- Gail Wickstrom, seeks a Special Permit w/ref. to Sec. 30.7.A. of the Zoning Bylaw to construct a 24x28 garage onto a pre-existing, non-conforming dwelling, as per plans filed, for property located at 17 South Highland Rd. (Atlas Sheet 40, Parcel 22)(Reg. of Deeds title ref: Bk. 27831, Page 59).
It was explained the request was for a 2-car garage to be sited 8 feet from the house. Plans were reviewed by the Board members. Since there were no further questions, the following Motion was made:

Motion (Thornley, 2nd Todd): Move in the matter of Gail Wickstrom (2016-021/ZBA) for property located at 17 South Highland Rd., (Atlas Sheet 40, Parcel 22)(Reg. of Deeds title ref: Book 27831, Page 59) to Grant a Special Permit w/ref. to Sec. 30.7.A. of the Zoning Bylaw to construct a 24x28-foot garage attached to a pre-existing, non-conforming dwelling, as per plans filed and dated 12/1316 by Sheds Unlimited, and lot 23 site plan by Peter McDonald/Architect dated 12/6/16. The ZBA Finds the proposal is not more detrimental to the neighborhood, and will exist in harmony with the intent of the Truro Zoning Bylaw.
Voted in Favor: Todd, Hultin, Perkel, Thornley, Brown. Voted Against: None.
Motion Carries: 5/Yes; 0/No, Unanimous.

2016-20/ZBA – Robert Stello & Jennifer L. Stello, by Agt/Atty Benjamin E. Zehnder, seek a Special Permit w/ref. to Sec. 30.7.A of the Truro Zoning and MGL 40A, Sec. 6 for the demolition and reconstruction of a pre-existing, non-conforming single-family dwelling on a pre-existing, non-conforming lot, as per plans filed, for property located at 22 Cliff Rd., (Atlas Sheet 29, Parcel 10)(title ref: Book 29845, Page 313).

Atty. Zehnder was present with the applicants to explain the petition; they are seeking a Special Permit because of the relationship to both Mayflower and Cliff Rds and the non-conforming aspect of the structure. There was a setback of 30.7 ft. where 50 ft setback is required. There had been Site Plan Review and endorsement by the Planning Board and 2 separate plans were referenced; they wished to raze and replace the location of the residence and garage more toward Cliff Road. Complete elevations were provided for the site and it was explained the Planning Board had requested a reduction of the height of the proposed tower on the plan by 1.5 feet.

Members reviewed the plans and asked about the landing shown. After further review, the following Motion was made:
Motion (Todd, 2nd Perkel): Move to grant a Special Permit to Robert Stello and Jennifer Stello, for property located at 22 Cliff Road (Atlas Sheet 29, Parcel 10, (title ref: Book 29845, Page 313) (2016-020/ZBA) w/ref. to Sec. 30.7.A of the Truro Zoning Bylaw and MGL 40A, Sec. 6, w/ref. to lot size and frontage on a non-conforming roadway and front and sideyard setbacks to Cliff and Mayflower Road, to reconstruct a pre-existing, non-conforming single-family dwelling w/ref. to plans by Arch-itects 33 Inc. dated 10/21/16, sheets 01.3, 01.4,01.5,01.6,01.16,01.7,01.8,01.9,01.12, 01.13, 01.14,01.15 &01.17, and site/topographic plan by Cape Cod Engineering, Inc. of 1/4/17, existing and proposed, as filed/submitted to the ZBA. The applicants shall proceed through the Historic Review process, as well. The ZBA Conditions the permit: there shall be a reduction of tower elevation by 1.5 feet. The ZBA Finds said proposal is in keeping with the intent of the bylaw and not substantially more detrimental to the neighborhood.

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

At this point Board members resumed review of the previously presented petitions (Rybeck/Siniscalco, Shea/Richland) and made the following Motions:

(Motions on Rybeck/Sinscalco petition):

[1st] Motion (Hultin, 2nd Todd): Move that the Special Permit request by Barbara Rybeck and Joan Siniscalco for property located at 402 Shore Rd., (Atlas Sheet 10, Parcel 22)(2016-103/ZBA (Title Ref. Book 13530, Page 012), be allowed to be withdrawn without prejudice. Voted in Favor: Todd, Hultin, Perkel, Thornley, Brown. Voted Against: None.
Motion Carries: 5/Yes; 0/No, Unanimous.
[2nd] Motion (Hultin, 2nd Todd): Move in the matter of 2016-013/ZBA – Barbara Rybeck & Joan Siniscalco, for property located at 402 Shore Rd., (Atlas Sheet 10, Parcel 22)(title ref: Book 13530, Page 012). to Grant a Variance w/reference to Sec. 50.1. lot size for the construction of a new Single Family Residence, as per plans filed with the ZBA. The ZBA grants said variance based on the following Conditions and Findings: (w/ref. to MGLC.40A § 10: The circumstances relating to the soil conditions, shape or topography of such land and structures but not affecting in general the Beach Point Limited Business District are:

A) the unique legal proceedings and circumstances giving rise to the creation of the subject shape and size of the lots distinguish them from every other lot in the Zoning District;

B) in addition, the unique coastal dynamics influencing topographical size and shape of the lots and their soil conditions contribute to the financial and other hardships;

C) the two lots were defined by the structures constructed on 408 Shore Rd. and 402 Shore Rd. in 1945 and 1962 respectively, confine and dictate the lot lines and lot size;

D) Absent the Grant of Variance relief, the lots will continue to remain unbuildable and potentially result in the degradation of the resource and surrounding areas;

E) The intent of the Bylaw is not being derogated as the introduction of a single-family use eliminates the possibility of more intensive uses such as cottage, motel and condominium conversions.

The Board accepts the findings subject to the following Conditions: (1) Any landscape or privacy fencing be limited to three (3) feet in height; (2) the proposed seawall at 408 Shore Rd. shall be maintained in accordance with the Conservation Commission Order of Conditions. The ZBA also notes the parties shall obtain and process an application to the Planning Board for ANR endorsement.

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

(After discussing proposed Findings, the following Motion was made):
Motion (Hultin, 2nd Todd): Move to grant a Variance to Kevin Shea and Judith Richland for the construction of a Single-Family Residence on a pre-existing, non-conforming lot which also lack required frontage with ref. to Sec. 50.1. of the Truro Zoning Bylaw for property located at 408 Shore Rd. (Atlas Sheet 10, Parcel 41(2016-017/ZBA) and based on the following Findings and Conditions approved:

(w/ref. to MGLC40A § 10): The circumstances relating to the soil conditions, shape or topography of such land and structures but not affecting in general the Beach Point Limited Business District are:

A) the unique legal proceedings and circumstances giving rise to the creation of the subject shape and size of the lots distinguish them from every other lot in the Zoning District;

B) in addition, the unique coastal dynamics influencing topographical size and shape of the lots and their soil conditions contribute to the financial and other hardships;

C) the two lots were defined by the structures constructed on 408 Shore Rd. and 402 Shore Rd. in 1945 and 1962 respectively, confine and dictate the lot lines and lot size;

D) Absent the Grant of Variance relief, the lots will continue to remain unbuildable and potentially result in the degradation of the resource and surrounding areas;

E) The intent of the Bylaw is not being derogated as the introduction of a single-family use eliminates the possibility of more intensive uses such as cottage, motel and condominium conversions.

The Board accepts the findings subject to the following Conditions: (1) Any landscape or privacy fencing be limited
to three (3) feet in height; (2) the proposed seawall at 408 Shore Rd. shall be maintained in accordance with the Conservation Commission Order of Conditions.

The ZBA notes it would be preferable to have two distinct lots diligently processed by an application to the Planning Board for ANR endorsements.

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

OTHER BUSINESS

Next Meeting: Monday, February 27, 7 PM at Truro Town Hall
Meeting adjourned at 9:45 PM

Respectfully Submitted,

Susan Kelly

Susan Kelly

Office of Town Clerk
Treasurer – Tax Collector
MAR 28 2017
Received TOWN OF TRURO
By