

**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
FEBRUARY 27, 2017
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**

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

Meeting convened at 7:02 PM by Chairman Perkel.

Minutes approved: Oct. 24, 2016; Nov. 28, 2016, Dec. 19, 2016

Public Hearing on Remand of 2016-009ZBA, Fisher Road Realty Trust, by Atty. Christopher Snow, for property located at 9B Benson Road (Atlas Sheet 53, Parcel 50), Regis. of Deeds title ref Book 22682, Page 84), for a variance from the street frontage definition, road width and frontage requirements set forth in Sections 10.4 and 50.1 of the Truro Zoning Bylaws.

Since a request for a continuation had been sent to the ZBA, a Motion was made by Mr. Todd, 2nd by Mr. Brown to continue the petition to March 27, 2017. Unanimous vote to continue.

2016-022/ZBA – Adam and Kelli Thomas (applicants), by agt/atty Benjamin Zehnder, for property located at 67 Old King's Highway (Atlas Sheet 47, Parcel 6; Reg. of Deeds title ref: Book 13445, Page 315), (property owner Perian Flaherty). Applicants are seeking to overturn the Building Commissioner's decision not to issue a permit, and are also seeking a Special Permit, w/ref. to Sec. 30.7 of the Truro Zoning Bylaw to construct a single-family dwelling with usual accessory buildings on a pre-existing, non-conforming lot.

Chmn. Perkel said he would like a refusal from the Building Commission and was concerned there was no plan. After discussion on the appeal, Mr. Perkel explained there was nothing before the ZBA that is "appealable," and a motion was made by Mr. Perkel, 2nd by Mr. Thornley to dismiss the appeal because there is no opinion/decision of the Building Commissioner to appeal. Under discussion, Mr. Brown noted the hearing had been opened and felt the applicant should be heard. Atty. Zehnder spoke and explained the applicants had a purchase and sale agreement for the property and he spoke of protection under MGL C.40A, Sec. 6 and the isolated lot exemption (ref: Subdivision Control Law); he continued, they were trying to determine whether it is a buildable lot; this is a 4.7-acre lot with 149 feet of frontage and he would rather they consider a Special Permit. Atty. Zehnder said he did ask for a determination from the Building Commissioner; however he did not receive one.

Members then voted on Mr. Perkel's Motion: to dismiss the aspect of the application which requested they overturn the Building Commissioner's Decision not to issue a permit (2nd Mr. Thornley). Voted in favor: Todd, Brown, Dundas, Perkel, Thornley; Voted against None. Motion Carries: 5/0 Unanimous. The wording for said Motion was as follows:**[1st Motion (Perkel, 2nd Thornley):** Move in the matter of Adam and Kelli Thomas (2016-022), for property located at 67 Old King's Highway, (Atlas Sheet 47, Parcel 6)(Reg. of Deeds title ref: Book 13445, Page 315) to dismiss the application to the ZBA.]

Discussion moved on to the Special Permit aspect of the application; they noted there had been a 2000 favorable decision from the ZBA; Mr. Dundas noted it seemed redundant and wondered if another ZBA decision was necessary. Atty. Silverstein of Kopelman & Page spoke of the declaratory judgment and Land Court process in relation to the property. Members spoke of the appeal in general, and Atty. Zehnder reiterated they were asking for a determination that it was a buildable lot. Members discussed the procedure and while

members Brown, Todd and Thornley were comfortable with the 2000 decision aspect, Mr. Perkel reiterated, the Board should not give an advisory opinion, and that he felt there was incomplete information provided.

A Motion was then made by Mr. Todd, 2nd by Mr. Brown to move in the matter of Adam & Kelli Thomas for property located at 67 Old King's Highway, (Atlas Sheet 47, Parcel 6) the ZBA recognizes the 2000 ZBA decision and directs the applicants to submit a plan to the Building Department for a formal determination. After further discussion the Vote was: 3 in Favor: (Todd, Dundas, Brown); 1 Against (Perkel); 1 Abstain (Thornley). (3-1-1).

After further discussion, Atty. Zehnder requested a withdrawal of the application, and the following Motion was made:

2nd Motion (Brown, 2nd Todd): Move in the matter of Adam and Kelli Thomas (2016-022), for property located at 67 Old King's Highway, (Atlas Sheet 47, Parcel 6)(Reg. of Deeds title ref: Book 13445, Page 315) to accept the request for withdrawal of the application without prejudice.

(Voted in Favor of the motion: Todd, Dundas, Thornley, Perkel, Brown; Voted Against the motion: None. Motion Carries: 5/Yes; 0/No. Unanimous.)

--Continuation: 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), as continued from 1/23/17.

Chmn. Perkel noted those voting would be Mr. Dundas, Mr. Thornley, Mr. Perkel, and Mr. Todd; Mr. Brown recused himself from the hearing.

Since Findings had been requested at the meeting in January, those had been provided and were read; the following Motion was made:

Motion (Thornley, 2nd Perkel): Move in the matter of Stephen Walsh (2016-019/ZBA), for property located at 5 and 0 Walsh Way, (Atlas Sheet 43, Parcel 134&135), to accept the proposed Findings of Fact and grant a Special Permit and Variance (for Parcel 134) w/ref. to Sec. 50.1.A and 30.7.A of the Zoning Bylaw to allow setback nonconformities as per plans filed.

Findings of Fact (2016-019/ZBA)

1. The Applicants, by and large, *are* the neighborhood. The widening of Walsh Way and Valentine Lane, the main purpose for the plan, are something that *all* the owners are seeking;

2. Walsh Way and Valentine Lane were created as thirty-foot wide ways prior to the Town's acceptance of the Subdivision Control Regulations, therefore the widening of these ways will not increase the non-conformities with the exception of the northeast and southeast corners of the garage on Lot 2, which will result in *de minimis* intrusions into the setback line of 1 and 7/16th inches and 4 and 5/16th inches respectively;

3. The removal of the cottage at the northwest corner of Lot 3 and the combining of two separate lots (43-7 & 43-8)[Sheet 43/Parcel 134 & Sheet 43/Parcel 135] at the corner of Route 6 and Walsh Way will result in a *less* intensive use of the property;

4. There is no construction proposed for the extension of either road at this time. At the request of the Cape Cod Commission, a five-foot-wide buffer strip has been shown between the terminus of Walsh Way near the northwest corner of Lot 5 and the remaining back acreage owned by the Walsh family to prevent segmentation;

5. The proposed alterations are consistent with single-family residences in the zoning district and will be consistent with the neighborhood in terms of development, traffic flow, appearance and density and will not change or adversely affect the neighborhood;

6. The proposed alterations will exist in harmony with the general purpose and intent of the Bylaw.

Voted in Favor: Todd, Dundas, Thornley, Perkel; Voted Against: None. Motion Carries: 4/Yes; 0/No, Unanimous.

A short break was taken from 8:05 to 8:15 PM.

Public Hearing on 2017-001ZBA, Nathalie Ferrier, Nancy Callander, Trustee, SRT, John A. Van Kirk, Jon Friedman, Joanne Barkan and Vicky Tomayko, by Atty. Robert Shapiro, seek to appeal the Building Commissioner's Denial of Enforcement Action for property at 25-27 Stephen's Way, Truro.

It was noted a request had been received from Atty. Shapiro to continue the petition and the following Motion was made.

(Motion: Brown; 2nd Perkel): Move to continue to March 27, 2017 at 7 PM at Truro Town Hall. 5/0 Unanimous to continue.

OTHER BUSINESS

Members discussed adopting rules and regulations that applicant's counsel prepare and provide Findings of Fact and add to the Application Checklist; a Motion made in this regard was withdrawn.


Since member Allee had resigned, the Board noted they would send her a letter thanking her for her time on the ZBA.

Next Regular meeting: March 27, 2017;

Adventure Bound Continuation: March 20, 2017 (Continued at Jan. ZBA Meeting).

Meeting adjourned at 8:35 PM.

Respectfully submitted,


Susan Kelly

