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**ZONING BOARD OF APPEALS  
TRURO, MASSACHUSETTS  
MINUTES  
MONDAY, SEPTEMBER 26, 2016  
7 PM - TRURO TOWN HALL  
24 TOWN HALL ROAD, TRURO**

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

Minutes – July 18, 1915 – correct sentence on 2<sup>nd</sup> page to read: “Chairman Perkel spoke of ownership interest .... ‘as to land he did not own or have a fee interest.’” Approved by unanimous vote.

Minutes – August 22, 2016. Approved with Allee abstaining.

Minutes – August 29, 2016. Approved, with correction of *drywell* not drywall, by unanimous vote.

**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, July 18, 2016, August 22, 2016 and August 29, 2016.

Chmn. Perkel explained they had a draft decision for consideration and he would like to start by addressing Findings of Fact. It was noted in respect to the height ruling, Habitat’s counsel had previously withdrawn their waiver request because of Building Commissioner Braun’s calculations had been reviewed, and a waiver was no longer at issue.

Findings of Fact: Procedural Requirements were reviewed: #1 (notice): approved 5/0 vote.

Findings of Fact: Steepness of Slope: #1. Approved as worded: “All parties acknowledge that this steeply-sloped site is developable with appropriate storm management protocols.”

(Approved on Motion by Perkel, 2<sup>nd</sup> by Todd: 4/1 approved. (Vote: Todd, aye; Hultin, aye; Perkel, aye; Dundas, aye. Thornley, nay.)

(Steepness of Slope): #2. Approved as worded: “The Truro Building Commissioner on his own initiative advised, based on his own calculations, all proposed buildings fall within allowable building heights under the Town of Truro Zoning Bylaw. Therefore, the requested waiver of §10.4 Definitions – Mean Ground Level has become moot as to building height. In addition, Habitat withdrew their request for a waiver of building height after receiving the Building Commissioner’s opinion.

(Approved on a Motion by 4/1 Vote: In favor: Hultin, Todd, Perkel, Dundas; Against: Thornley.)

(Findings of Fact: Stormwater Management): Items 1 through 8 in regard to adequacy of the applicant’s assessment of stormwater management impacts from the proposed project were read and discussed. There were no other suggested Findings to be included and after further discussion on Truro Subdivision regulations, the Motion to approve the Findings of Fact by a vote of 4/1. (Vote: Todd, aye; Hultin, aye; Perkel, aye; Dundas, aye. Thornley, nay.)

Discussion moved on to §3.6 Street Design from the Truro Subdivision Regulations (§3 Design Standards). It was suggested the ZBA cite the document: “Town of Truro Rules and Regulations Governing the Subdivision of Land” in their decision. Mr. Dundas asked about Safety Standards regarding the road, minimum width and access for emergency vehicles.

Atty. Veara explained in reference to Sec. 3.6 Street Design, this was not a road. Mr. Dundas said he wanted to make sure of safety; Mr. Perkel noted the road standards section of the bylaw was not under the remand to the ZBA.

Mr. Perkel referred to the Court Judgment and read “FURTHER ORDERS OF THE COURT” with text as follows: “that the Decision of the Truro Zoning Board in its Case No. 2014-008 is ANNULLED as to the waivers granted concerning Town of Truro Zoning Bylaw, Section 10.4 (i.e. permitted steepness of grade) and town of Truro Rules and Regulations Governing the Subdivision of Land, Section 3.6 (i.e. storm frequency as the basis for drainage calculations).”

Mr. Perkel continued to read the Judgment:

“it is further ORDERED:

- “1. That Case No. 2014-008 be REMANDED to the Truro Zoning Board of Appeals for a further public hearing, after appropriate notice in accord with G.L. c.40A, sec.11;
- “2. That at such meeting, there shall be considered the project’s grade and drainage issues, including storm management measures, generally and the above-described waivers specifically;
- “3. That any waivers granted, conditions set or other accommodations made be supported by sufficiently detailed findings of fact and be sufficiently explained in the ZBA’s written decision;  
[time waivers were granting in regard to the following dates]
- “4. That such meeting shall occur on or before June 27, 2016; and
- “5. That the Board shall file its decision on or before August 11, 2016.”

Mr. Perkel also noted he wanted separate votes on individual categories.

After review and discussion of decision wording the final version was voted and is included in the Minutes as voted:

The Final Decision of the Zoning Board of Appeals is as follows:

- **Town of Truro**
- **Zoning Board of Appeals**
- **Decision**
- **Case #2014-008 – Habitat for Humanity of Cape Cod, Inc.**

**Applicant:** Habitat for Humanity of Cape Cod, Inc.  
**Site:** 181 Route 6  
**Atlas Sheet/Parcel:** Map 51, Parcel 66  
**Project Name:** 181 Route 6 Community Housing  
**Remanded Hearing Dates:** June 27, 2016 and August 22, 2016  
**Decision Date:** September 26, 2016

### **Background**

Habitat for Humanity is a non-profit organization dedicated to building simple, decent homes in partnership with families in need. Habitat builds new homes for first-time homebuyers through donated land, materials, labor and funding as well as other special financing strategies. The organization has built 94 units throughout the fifteen towns of Cape Cod. Habitat proposes to build three single-family homes and approximately 550 feet of roadway on the subject property. The subject property is a currently vacant 1.78 acres steeply graded wooded parcel in an already developed area. The lot has frontage on Route 6. The parcel is zoned Residential (R). Neighboring uses are residential. There are no wetlands on the site. The Massachusetts Natural Heritage and Endangered Species Program (MNHESP) has issued conditions which must be adhered to in order to avoid a take of state-listed species. The site is not within a designated flood hazard area.

### **Procedural Summary:**

Habitat for Humanity submitted an application to the Town Clerk on or about April 22, 2014 for a 40B Comprehensive Permit as set forth in MGL Chapter 40B, Sections 20-23 and 760 CMR 56.00, to build three new affordable homes on Map 51, parcel 66, which is a total of 1.78 acres.

On May 22, 2014, the Zoning Board of Appeals (ZBA) voted unanimously to grant a Comprehensive Permit to the above referenced project in accordance with MGL c. 40B. The ZBA’s decision was filed with the Town Clerk on June 2, 2014.

Brenda L. Connors of 4 Avery Way appealed the ZBA’s decision on June 23, 2014.

The appeal was heard in Superior Court on October 26, 2015, and an Order of Judgment was filed on April 1, 2016

The Court annulled the Comprehensive Permit Decision portions pertaining to

- Waiver of Town of Truro Zoning Bylaw §10.4

- Waiver of Town of Truro Rules and Regulations Governing the Subdivision of Land §3.6

The Court remanded the case to the Truro ZBA for further public hearing, specifically on the above listed waivers and in general on the project's grade, drainage and storm water management measures, with an emphasis on the requirement for notice in accordance with G.L. c. 40A, §11.

Following due public notice (attachment A) to parties of interest and Board and Commissions of the Town of Truro, the ZBA opened a public hearing on the remanded case on June 27, 2016. The public hearing was continued to August 22, 2016, on which date the public hearing was closed. The ZBA met on August 29, 2016 and September 26, 2016 to consider testimony and evidence submitted by the applicant, the plaintiff, and other members of the community, and to make findings and render a decision.

To assist with the evaluation of technical information pertaining to drainage and stormwater management on the subject property, the ZBA contracted the services of an independent professional engineer, Ms. Judy Z. Bersin, P.E., of Ryder & Wilcox, Inc., located at 3 Giddiah Hill Road in South Orleans, MA.

The ZBA reviewed the following information:

1. Supplemental information submitted by Habitat for Humanity to the Town Clerk on May 24, 2016, entitled: "Further Public Hearing on Application for a Comprehensive Permit MGL Chapter 40B, Sections 20-23 and 760 CMR 56.00, Applicant: Habitat for Humanity, Inc., Site: 181 Route 6, Truro, Massachusetts, Map/Parcel: Map 51, Parcel 66, Project Name: 181 Route 6 Community Housing, Date: Submission May 24, 2016; anticipated hearing June 27, 2016"

The above referenced submission contained, among other things, the following information:

- Updated Project Narrative to reflect the appeal and court proceeding and information submitted in response to issues raised at the proceeding.
  - Updated site plans, entitled "Habitat for Humanity of Cape Cod, Inc., 40B Permitting Plan, 181 Route 6, Truro, MA by J.M. O'Reilly & Associates, Inc.," sheets 1 & 2, dated 4/21/14 and revised 5/13/16, showing details on drainage (sheet one updated; sheet two unchanged)
  - Updated Architectural plans, entitled: "Proposed 2 Bedroom Ranch for Habitat for Humanity of Cape Cod," by David F. Alten, sheets 1-5, dated 5/12/16; and "Proposed 3 Bedroom Ranch for Habitat for Humanity of Cape Cod," by David F. Alten, Sheets 1-5, dated 5/12/16, showing details on gutters/downspouts
  - Newly submitted Storm Water Pollution Prevention Plan (SWPPP) entitled "For Construction Activities At: 181 Route 6, Truro, MA" by J.M. O'Reilly & Associates, Inc., dated May 13, 2016
  - Newly submitted "Drainage Calculations: Habitat for Humanity of Cape Cod" 181 Route 6, Truro, MA dated May 13, 2016 and including a plan showing hand drawn drainage areas #1, #2, and #3.
  - Sample Home Owner Association Documents.
2. Commonwealth of Massachusetts Barnstable Superior Court, Findings of Fact, Rulings of Law, and Order of Judgment, March 29, 2016
  3. Letter from Judy Z. Bersin, P.E., of Ryder & Wilcox (July 8, 2016) providing comments on stormwater management measures, drainage calculations, and Stormwater Pollution Prevention Plan included in the applicant's May 24, 2016 submission
  4. Revisions to stormwater management measures, drainage calculations and Stormwater Pollution Prevention Plan submitted by J.M. O'Reilly (August 2, 2016) in response to Ms. Bersin's letter
  5. Letter from Judy Z. Bersin, P.E., of Ryder & Wilcox (August 18, 2016) providing comments on revised information submitted by JM O'Reilly on August 2, 2016
  6. Letter report from Gary D. James, P.E. dated June 27, 2016 providing technical review of Habitat's submission.
  7. Supplemental report by Gary D. James, P.E., providing comment on the August 2, 2016 revisions to stormwater measures from JM O'Reilly (August 16, 2016)
  8. Proposed draft findings submitted to the ZBA by Habitat for Humanity (August 4, 2016)
  9. Proposed draft findings submitted to the ZBA by Brenda L. Connors through David S. Reid, Esq. (received August 18, 2016)
  10. Comments from Town Staff (attachment A)

11. Comment letters from members of the public (attachment B)

In arriving at its decision, the ZBA reviewed the above-referenced documents, as well as the testimony of the parties, their engineers, their counsels' written submissions and oral presentations and the comments of the public made during the public hearing. The ZBA also took notice of the fact that the Town of Truro has an insufficient supply of affordable housing to meet the needs of its year-round population, and that the Town has few properties available of a size and in a price range suitable for development of affordable housing.

Mr. Hultin moved to adopt the foregoing sections, and Mr. Todd seconded the motion. The motion was voted 5-0-0 (Mssrs. Hultin, Todd, Perkel, Dundas and Thornley voted in the affirmative).

Based on all of the above, the ZBA makes the following findings of fact.

**Findings of Fact: Procedural Requirements**

On motion by Mr. Todd and a second by Mr. Perkel the Board made the following findings of fact with respect to procedural requirements:

2. Notice of the public hearing on this remand case, including public posting, publication, and notice to parties of interest and Town Boards, was undertaken in conformance with the requirements of MGL Ch 40B §20-21, 760 CMR 56.02, and 760 CMR 56.05.

The motion was voted 5-0-0 ( Mssrs. Hultin, Todd, Perkel, Thornley and Dundas voted in the affirmative).

**Findings of Fact: Steepness of Slope**

On motion by Mr. Perkel and a second by Mr. Todd the Board made the following findings of fact with respect to the steepness of the slope of the proposed project, and the project's consistency with the definition of mean grade level pursuant to §10.4 of the Town of Truro Zoning Bylaw:

3. All parties acknowledge that this steeply sloped site is developable with appropriate storm management protocols.
4. The Truro Building Commissioner on his own initiative advised, based on his own calculations, all proposed buildings fall within allowable building heights under the Town of Truro Zoning Bylaw. Therefore, the requested waiver of §10.4 Definitions - Mean Ground Level is moot as to building height. In addition, Habitat withdrew their request for a waiver of building height after receiving the Building Commissioner's opinion.

The motion was voted 4-1-0 (Mssrs. Hultin, Todd, Perkel and Dundas voted in the affirmative; and Mr. Thornley voted against).

**Findings of Fact: Stormwater Management**

On motion by Mr. Perkel and a second by Mr. Todd the Board made the following findings of fact with respect to the adequacy of the applicant's assessment of stormwater management impacts resulting from the proposed project, and of proposed measures to address stormwater impacts.

9. The site can be developed in accordance with the plans submitted by J. M. O'Reilly & Associates, Inc. which incorporate stormwater management measures that have been demonstrated to be capable of handling a 50-year storm event; and Habitat proposes property stabilization and maintenance of the slope during and after construction.
10. Ms. Judy Z. Bersin, P.E., of Ryder & Wilcox reviewed Habitat's site plan, architectural drawings, drainage calculations, and Storm Water Pollution Prevention Plan (SWPP) included in its 5/23/16 submission. On July 8, 2016, Ms. Bersin submitted a letter to the ZBA detailing her comments on the materials. Her letter noted that drywells intended for roof runoff are sized adequately to handle a 50-year storm event. She also identified a number of questions and proposed changes to the stormwater management system and grading of the access road and parking areas, among other items. Bersin, 7/8/16



11. In response to Ms. Bersin's comments (7/8/16), J.M. O'Reilly Associates, Inc. submitted revised plans, drainage calculations and SWPPP incorporating numerous changes in the design of stormwater management measures and other related site design features. O'Reilly, 8/2/16
12. The revisions submitted by J.M. O'Reilly & Associates, Inc. (8/2/16) were reviewed by Ms. Bersin and commented on by her in a letter to the ZBA (8/19/16). Ms. Bersin noted that based on her independent drainage calculations, the enlarged leaching galleys provided for in the revised plan would be adequate for a 50-year storm event. She concurred with or had no issue with any of the other proposed changes. She further noted that a long-term maintenance plan for the stormwater system is required and a party responsible for that plan should be provided for. Bersin, 8/19/16
13. The ZBA accepts Habitat's plan to create a Homeowners Association that owners of the three dwelling units will be required to participate in as contributing members. That Homeowners Association will be required to contract with a qualified property management professional to develop and implement a long-term maintenance plan for the existing stormwater management system.
14. "An analysis of the pre- and post development runoff for the entire property, using HydroCad, shows post development peak flows for the 24-hour 50-year storm event to be 0.03 cubic feet per second less than peak flows of the undeveloped property. With proper stabilization and maintenance of the slope, adverse effects related to excess stormwater runoff can be minimized." Bersin 7/8/16
15. The drainage calculations based on a 50-year storm provided by the applicant meet the requirements of 2.5.2.6 of the Rules and Regulations Governing the Subdivision of Land in Truro.
16. The ZBA adopts and affirms the conclusions presented in Ms. Bersin's review of drainage calculations, design of proposed stormwater management measures, and Stormwater Pollution Prevention Plan, which indicate adequacy in handling stormwater flow from a 50-year storm event, provided that a long term management plan is designed and implemented and a responsible party is identified for this task. Bersin, 8/19/16 The ZBA notes that Ms. Bersin also recommended adherence to Massachusetts DEP Erosion and Sediment Control Guidelines for Urban and Suburban Areas, Land Grading and Stabilization section. Bersin, 7/8/16.

The motion was voted 4-1-0 (Mssrs. Hultin, Todd, Perkel and Dundas voted in the affirmative; and Mr. Thornley voted against).

### Decision

*Motion ( by Mr. Hultin, Second by Mr. Todd ):* Based on the Findings of Facts, with respect to the remanded waivers of §10.4 of the Town of Truro Zoning Bylaw, and §3 of the Rules and Regulations Governing the Subdivision of Land in Truro, Design Standards, the Board finds that Habitat made adequate plans to design, implement and maintain stormwater management measures on the site, and that certain requested waivers may be granted without adversely affecting the public health and safety of occupants in the development, the surrounding neighborhood, and the residents of the Town of Truro. Therefore, the following waivers are granted to Habitat for Humanity for the development of the Route 181 Route 6 Community Housing:

#### §10.4 Definitions - Mean Ground Level

Waive the provision included in the definition of Mean Ground Level: "Where the finished ground level varies in elevation on different sides of a building, the average of the various elevations at the centers of the four main sides. In the case where fill has been used to raise the finished ground level on a side(s) of the building to an elevation higher than the pre-construction ground level, on those sides the measurement shall be taken from the center of that side ten (10) feet out from the side of the building. Further, the finished grade of the fill, within one hundred (100) feet of the building shall not have a grade steeper than ten percent (10%) (one foot drop for every ten foot run)." Issues involving definition of mean grade level with respect to building height have become moot based on the Building Commissioner's advice that, based on his calculations, all three buildings are within height limits.

§3 Design Standards: Truro Rules and Regulations Governing the Subdivision of Land

**§3.6 Street Design**

As applicable, waive all street design requirements, including, but not limited to 3.6.6 Dead-end streets and 3.6.8 Design Standards. While lot 4 contains a private drive, and not a roadway, the drive meets or exceeds design standards in terms of minimum roadway width, minimum radius at street centerline, minimum vertical curve, minimum and maximum grade, all intersection standards, is less than the maximum length for a dead-end street, and meets all pavement and storm frequency standards.

**Ordered**

Habitat for Humanity, Comprehensive Permit Case #2014-008, has been granted the above noted waivers as well as the waivers and approvals contained in its May 22, 2014 Decision granting the Comprehensive Permit. This decision must be filed at the Barnstable County Registry District of the Land Court for it to be in effect. The relief authorized by this decision must be exercised within three years. Appeals of this decision, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 within twenty days after the date of the filing of this decision in the office of the Town Clerk. The Applicant has the right to appeal this decision as outlined in M.G.L. Chapter 40B, Section 22.

The motion was voted 4-1-0 (Mssrs. Hultin, Todd, Perkel and Dundas voted in the affirmative; and Mr. Thornley voted against).

On a motion by Mr. Hultin and a second by Mr. Perkel, the Board voted to approve the entire document and adopt it as a decision of the Board. The motion was voted 4-1-0 (Mssrs. Hultin, Todd, Perkel and Dundas voted in the affirmative; and Mr. Thornley voted against).

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[Bertram Perkel, Chair

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Date Signed

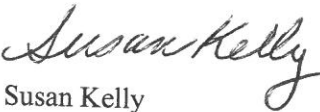
**OTHER BUSINESS**

Meeting Schedule for 2017 was approved by Unanimous Vote.

Next Regular Meeting: Oct. 24, 2016, at Town Hall at 7 PM

Meeting adjourned at 8:05 PM

Respectfully Submitted,

  
Susan Kelly