ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
MINUTES
THURSDAY, JUNE 1, 2017
7 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO

QUORUM PRESENT: B. Perkel (Chmn); F. Todd (V. Chair); A. Hultin (Clerk); J. Thornley; J. Dundas.
(N. Brown (Alt.), recused/absent; S. Areson (Alt), absent)
Also present, Interim Planner Terkanian, Town Counsel Silverstein. (S. Kelly, Recording Sec.)

Meeting convened at 7:17 PM by Chairman Perkel.

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., 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, January 23, 2017, March 20, 2017, May 4, 2017 (w/time waivers).

Mr. Perkel reminded the Board the evidentiary portion had been closed previously and they were considering a draft Decision provided by Counsel; they would take a few moments to review the draft Decision.
He added before they get to the Findings of the Decision he spoke of member Dundas' issue on the Finding of Change of Use. Mr. Dundas said the applicant has made it certain to convey the feeling they did not think the alteration of the upgrade has changed the use, if the idea is change because of the cutting (in order to upgrade the water, elec, etc.), he agrees the action taken was improper but the plan of what they are going to do and change of use remains a question; Mr. Hultin said if they uphold the Building Commissioner, is there inherently some avenue to be taken, i.e.: site plan approval by Planning Board. Mr. Perkel said they were operating under a draft decision; they must consider what they (Adventure Bound) was permitted to do; they have a proposal to add language to discussion as to what they (the applicant) can do in the upcoming season; they have a proposal to allow use at the area or leave it and go back to the Building Commissioner. Mr. Todd asked how that dealt with Site Plan Review; Mr. Perkel said it has nothing to do with site plan review; they should consider the review of the Draft Decision.
Members undertook the review:
-- Page 1 through Page 3 – no changes; Page 4 Findings of Fact reviewed separately.
(Pg. 6) "The clear cutting…" possible insert: "There was significant clearing of most trees and shrubbery…"
Discussion on language of 'clear-cutting' ensued; suggestion was made to insert "significant" cutting for "clear" cutting.
Mr. Dundas mentioned the Fisheries and Wildlife paragraph and the take of habitat issue; Mr Hultin said he could see where it does not specifically impact zoning; it is not germaine to the zoning issue; therefore they would delete that paragraph. (Paragraph started with: "The state Department of Fisheries and Wildlife has determined …. Seashore.")
On draft pg. 7, paragraph 2.b. eliminate "large, noisy, high occupancy diesel vehicles…," and insert [in italics] "… used *by larger higher occupancy vehicles*…"

Members continued with their review of the draft; some members also discussed a possible meeting with the Planning Board regarding the property and Site Plan Review; however, Mr. Perkel said he didn't see the ZBA getting involved with what the Planning Board is doing; he spoke of the changes manifested in the upper area that the ZBA is trying to address.
Mr. Perkel noted they were trying to find a way to let them function, that is, continue with camping – continue to function during their tenancy; they spoke of uses described on the Hortons area map.
They spoke of using the wording from the draft: "The Board determines that such use may continue on an interim basis as a zoning matter pending the applicant's pursuit of site plan approval."
Atty. Silverstein spoke and said they (the Planning Board) may not pursue the Site Plan Review process;

He also mentioned the use and the grandfathered aspect with reference to the map.
Members continued their discussion. The point was raised the grandfathered use from 1959 doesn't address what currently exists and discussed limiting conditions to the 2017 season. Atty. Silverstein noted there was no guarantee there wouldn't be an appeal.
Members concurred it was not the intent to take away or prevent the use of the property, that is, for camping; Mr. Perkel spoke about avoiding an issue of the current use of the property in relation to the future.
Members discussed continuation of "primitive" camping; Mr. Perkel said he was not as concerned about the "route" as long as what they are doing is an allowable use on the map. Members discussed continuation of camping without Site Plan Review; Mr. Todd noted the Building Commissioner's 4-category review did include Site Plan Review requirement.
Mr. Hultin said he found the wording "exemption" from zoning at an earlier meeting was troublesome to him; Mr. Perkel said they could use the Site Plan Review requirement as a condition of letting them go forward.

(A recess was taken at 8:30 PM and the meeting reconvened at 8:50 PM.)

Mr. Perkel noted Site Plan Review cannot occur until the Zoning Appeal is completed, and if Adventure Bound did not prevail, he discussed the upper area use. The Stop Work Order dealt with the upper site, and it was suggested they use transition language in addition. Discussion on the wording, including "primitive" ensued; allowed use of camping pop-ups, however, no rvs and other larger campers may be used in the upper area was a suggestion. Map reference and agreement by the ZBA they should file the map with the decision.
Members then spoke of a vote on the draft as edited and with additions including the commercial site plan development reference; they also spoke of a motion to affirm the building commissioner's referral. A Motion was made by Mr. Hultin with a 2nd by Mr. Todd:
Motion: (Hultin, 2nd Todd): In the Continuation of 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), whereby the Applicant is appealing the May 4, 2016 Stop Work Order of the Bldg. Com., for work related to construction and installation of state-mandated sewage treatment facility, per plans filed, and as printed and corrected in the draft Decision, the ZBA affirms the decision of the Building Commissioner. Voted in favor: Perkel, Hultin, Dundas, Todd, Thornley. Voted against: None. Motion carries: 5/0 Unanimous.

Meeting adjourned at 9:15 PM

Respectfully submitted,

Susan Kelly

Susan Kelly

(Decision Attached)

Office of Town Clerk
Treasurer – Tax Collector
AUG 30 2017
Received TOWN OF TRURO
By

Office of Town Clerk
Treasurer – Tax Collector
AUG 30 2017
Received TOWN OF TRURO
By

DECISION OF THE ZONING BOARD OF APPEALS OF TRURO, MA.

Property Owner(s) and/or Applicant(s): – 2016-010ZBA Adventure Bound Camping Resorts

Property Location: 67 S. Highland Road

Atlas Sheet: 37 **Parcel(s):** 15 (2016-0010/ZBA)

And Property location: 10 Old Dewline Road

Atlas Sheet: 37, Parcel: 19

Reg. of Deeds title ref: book 26095, Page 3

Hearing Date: Thursday, June 1, 2017 (as continued from 8/22/16; 11/28/16; 1/23/17; 3/20/17, 5/4/17 and 5/18/17 w/time waivers)

Special Permit	☐	Vote: ___	Approve
Variance	☐	_X_	Disapprove (denying appeal)
Appeal of Building Commissioner		___	Abstain
Decision	☒		
Other	☐		

Decision:

In the matter of 2016-010ZBA Adventure Bound Camping Resorts, Mr. Hutlin moved and Mr. Todd seconded a motion to affirm the Building Commissioner's Notice of Zoning Bylaw Violation and Order to Cease, Desist and Correct issued on May 4, 2016, with respect to Zoning Bylaw Secs. 70.1.D.1, 70.3.A.1, 30.2 and 30.3.12, finding that:

- Commercial Site Plan approval is required but was not applied for or obtained prior to proposed upgrades being undertaken; and
- The new proposed use of the property would constitute a change or substantial extension of any protected preexisting, nonconforming use of the property, since:
    - There has been an alteration and extension of the nature and purpose of the use;
    - There has been a change in the quality and character as well as the degree of the use of the property; and
    - the resulting use is substantially different in kind in its effect on the neighborhood.
- During the pendancy of any appeal of this decision and, upon resolution of any such appeal, while

commercial site plan approval is being dilligently pursued, the property owner may continue to use the "upper area" of the property for primitive tent camping defined as tent and pop-up trailer use, no RVs or other large vehicles may be used in the upper area.

The motion caried on a vote of 5-0-0.

The appeal is accordingly denied on all counts for the reasons stated by the Building Commissioner in his Order and the Findings of Fact presented below.

Procedural Summary

On May 4, 2016 the Truro Building Commissioner issued a Cease, Desist and Correct Order and Notice of Zoning Bylaw Violation to Adventure Bound as a result of extensive site clearing in what is commonly referred to as the upper area of Horton's Campground.

On May 26, 2016 the applicants filed a Notice of Appeal of the Building Commissioner's Notice of Zoning Bylaw Violation and Order to Cease, Desist and Correct issued on May 4, 2016. The Building Commissioner's Notice and Order cites Violations of the following sections of the Town of Truro Zoning Bylaw:

- 70.1.D.1 – "No...site clearing...shall be initiated on any site to which this section applies until the required Commercial...Site Plan approval is obtained from the Planning Board."
- 70.3.A.1 – "Commercial Site Plan Review is required for any...modification of any properties...other than that of single or two family residences and their accessory uses and structures."
- 30.2 – Use Table – "Uses not expressly premitted are deemed prohibited."
- 30.3.12 – Seashore District, Permitted Uses – "Lawfully pre-existing nonconforming commercial uses...may continue, but in no case shall the use be altered..."

The property is located in a residential zoning district and within the Seashore District, under the Turo Zoning Bylaws.

A duly advertised public hearing was scheduled for August 22, 2016 and subsequently continued to November 28, 2016, January 23, 2017 and March 20, 2017. On March 20, 2017 the public hearing was reconvened and testimony was taken, after which the hearing was continued to May 4, 2017. On May 4, 2017 additional testimony was taken and the hearing was continued to May 18, 2017. On May 18, 2017, after taking additional testimony, the ZBA closed the public hearing and began its deliberations. Deliberations were continued to June 1, 2017.

During the public hearing the ZBA heard from representatives for the applicant, including James Bourne, Horton's Campground Manager, Kevin Aguiar, P.E., BETA Engineering, Inc. and Joel Grozier, local resident, as well as Attorney Donald Nagle who presented evidence supporting the position that the seasonal campground, known as Horton's Campground (Horton's Campground) has been in operation since the 1950s, i.e. before zoning was adopted by the Town of Truro in 1959. Adventure Bound purchased the campground in February 2012 and has operated the campground since acquisition.

The applicant's representatives also presented:

- information regarding an administrative consent order (ACO) entered into with the Massachusetts Department of Environmental Protective (MassDEP) requiring the upgrade of the subsurface sanitary disposal system (SSDS) serving the campground. The ACO required incorporation of these upgrades into the previously approved SSDS upgrades at a nearby campground also owned by Adventure Bound, the North Truro Camping Area. On June 16, 2015 the MassDEP issued approval to construct and operate a centralized wastewater treatment plant to serve both campgrounds. In April 2016, Adventure Bound commenced construction of the centralized wastewater treatment plant in compliance with the MassDEP approval.
- information regarding the town of Truro Board of Health permitting records for Horton's Campground between 1999 and 2017.
- Information regarding the submittal of an application for Commercial Site Plan Review to the Truro Planning Board on October 25, 2016.

During the hearing the ZBA heard from a representative of the United States Department of the Interior, National Park Service, Cape Cod National Seashore, who presented letters dated July 14, 2016, May 1, 2017 and May 15, 2017 with accompanying materials. These communications included a chronology of correspondence related to the campground dating back to November 1961 and aerial photographs taken in June 2014 and June 2015 before and after the clearing of the upper area occurred.[1]

During the hearing the ZBA also heard from several residents of Truro, including the Chairman of the Conservation Commission and several nearby property owners, who provided testimony as to the impact the changes that have been made to the campground and in particular the significant cutting of trees on the upper area along with the removal of the underbrush and topsoil has had on the neighborhood. Photographs of campsite 155 before and after the clearing were submitted. In addition, the ZBA received a copy of correspondence from the Massachusetts Natural Heritage and Endangered Species (MassNHEDS) stating that the project as proposed, has and will result in a Take under 321 CMR 10.18(2)(b) of Eastern Box Turtle."

Findings of Fact

During its deliberations, the ZBA members found that:

- Campgrounds are not expressly permitted in any zone in the use table. In this case, the commercial campground use is a preexisting nonconforming use entitled to certain protection and relief under Massachusetts General Law c. 40A, §6 and the Town of Truro Zoning Bylaw §30.7.
- Substantial site alterations to properties containing pre-existing nonconforming uses, including Horton's Campground, are subject to Commercial Site Plan Review. The applicant began work and cleared the upper area without applying for or obtaining Commercial Site Plan approval from

[1] The Property is comprised of two distinct areas—the "upper area" and the "lower area." Prior to 2016, the upper area was heavily wooded, with only a narrow dirt access road. As depicted on a map of the Property on the Applicant's internet website (http://www.abcamping.com/abcapecod/hortons_campground_map.php), a copy of which is attached hereto, the upper area is designated as containing only "premium primitive tent site[s]". Only the lower area is shown as being available for use by trailers or recreational vehicles.

the Planning Board.

- The campsite is located within the Cape Cod National Seashore, an area designated by federal law to preserve the natural character and environment of Cape Cod.

- Horton's Campground has historically accommodated campers using tents, pop-up trailers and recreational vehicles. Horton's Campground consists of two distinct areas; a lower and an upper camping area. The campground is situated within pitch pine-oak woodlands. Prior to alteration of the upper area, it was largely inaccessible to RVs and other large vehicles. The lower area, an open area with shell and gravel roadways, currently has eighty-three (83) campsites with many of the campsites having some level of existing sanitary, water and electric services. The proposed alterations to the lower area include installing a new sanitary collection system within the roadway network, a centralized sewer treatment facility, and a leaching field. Trenches will be dug to each campsite for sewer upgrades, electrical connections and water service. The upper area, a more primitive camping area in a wooded environment with dirt and gravel roads, currently has 135 campsites and public restrooms. The upper area of Horton's Campground was historically and principally used for primitive tent camping. The proposed upgrades to the upper area include (in addition to the cutting of a substantial number of its trees and the removal of nearly all vegetation and all of the top soil, which has already occurred) extending sewer, water and electrical service to each campsite as well as regrading and realigning the road between the lower and upper area and the roads within the upper area as well as many of the campsites in the upper area.

- Thirty-two campsites located in the lower area currently are provided with individual sewer pump out connections, seventy-three lower area campsites are currently provided with individual potable water service; and sixty-three campsites in the lower are are currently provided with individual electric service.

- From 1999 through 2017 the Truro Board of Health, pursuant to Massachusetts General Law,

issued licenses to operate a campground to Horton's for as few as 200 (2000-2012) and as many as 222 (1999) campsites. The current license provides for 218 campsites. However, the evidence presented at the hearing indicates that there were only 130 campsites in 1961—two years after the Town adopted zoning—and that the ratio of tent camping to RV/trailer camping at that time was 3 to 1, with the upper area reserved almost exclusively for primitive tent camping and largely inaccessible to RVs.

- The ACO entered into between Horton's Campground and MassDEP addresses only centralized wastewater treatment and did not require the significant cutting of trees in the upper area, and removal of all of its topsoil and underbrush, an area of greater than nine (9) acres, that was done by the applicant without seeking or obtaining required commercial site plan approval.
- The significant cutting of trees throughout more than nine (9) acres, along with removal of all topsoil and underbrush, has permanently altered the quality and character of the campground and camping experience, virtually eliminating the primitive tent camping experience that had existed. The changes in the landscape have changed the effect of the use on the neighborhood, which is unique in being within a designated National Park established specifically to preserve the natural environment in place at the time of designation.
- Recreational vehicles provide a different quality and character of camping experience and have a distinct and different impact on a neighborhood and on the National Seashore than primitive tent camping in a wooded area. What was a wooded primarily primitive tent camping area in the upper area of Horton's Campground has been dramatically transformed by the clearing, grading and utility work for the purpose of expanding the number of sites available for full-service recreational vehicle camping.
- Within the Seashore District, Section 30.3.12 of the Town of Truro's Zoning Bylaw specifically states, "Lawfully pre-existing nonconforming commercial uses and structures may continue, but in no case shall the use be altered or converted to another commercial use."

Reasons for Decision

1. The significant alteration of the site (grading, construction of roadways, installation of utilities, and substantial cutting of vegetation) is not allowed without obtaining commercial site plan approval from the Planning Board. The applicant's argument that these activities are exempt from site plan review because of the existing of a preexisting, nonconforming use on the property is meritless. These are new activities that independently require site plan review, regardless of whether the underlying use is grandfathered.

2. The proposed use of the property for 218 RV camper sites, each with water, sewer, electric, cable and wifi service, would constitute a change or substantial alteration of the preexisting nonconforming use of the site for 130 campsites, the vast majority of which (and, in the upper area, all of which) were dedicated to primitive tent camping with no utility connections, which existed when the Town adopted zoning in 1959.[2]

    a. The Board finds that the nature and purpose of the use of the property in 1959 was primarily tent camping, with limited use of the property for large campers and RVs in the lower area. Though the lower area was, at times, used for a few mobile homes, that use has since been abandoned, with the exception of a single mobile home used by the manager of the property. Utility connections were limited and were nonexistent in the upper area.

    b. For the same reasons, the Board also finds that the quality or character, and degree, of the grandfathered use has changed. What was historically a heavily-wooded property used primarily for primitive tent camping is now proposed to be used almost exclusively by

[2] No evidence was submitted regarding the exact number of site at Hortons in 1959. For purposes of this decision, the Board will assume the 130 campsites that existed in 1961 had existed since 1959. However, the Board notes that the burden is on the applicant to demonstrate the existence and extent of a grandfathered use.

larger, higher occupancy vehicles, each of which will have its own water, sewer, electrical and cable connections. Moreover, the applicant advertises that it rents RVs and trailers and stores these vehicles (as well as some customer vehicles) at the property on a year-round basis. In order to accommodate all of these large RVs, the applicant has clear-cut much of the property and proposes extremely limited revegetation of the property. These facts, coupled with the approximately 60% expansion of the number of campsites supports the Board's conclusion that the quality, character and degree of the use have all changed substantially from the use that existed in 1959.

c. The proposed use of the site will have a much more significant impact on the neighborhood. More and larger campsites designed to accommodate larger groups living in large vehicles will bring more traffic and other disruptions to the residential neighbors and to the beaches within the National Park. Moreover, the fact that the property is located within the National Park makes the neighborhood unique, both in its natural features and character and which Congress has specifically found to require and merit special protection. The very purpose of the Cape Cod National Seashore Act was to protect and preserve the natural beauty of the Seashore. Increasing the number and size of campsites, the amount of heavy vehicle traffic attendant to the new proposed use of the property to accommodate 100% RV usage and the substantial adulteration of the landscape by stripping a large portion of the property of all top soil, underbrush and nearly all trees, are all patently inconsistent with the purposes of the Cape Cod National Seashore Act and the historic impacts of the primitive campground use that prevailed at the property in 1959.

I hereby certify this as a true and accurate record of the Zoning Board of Appeals:

Bertram Perkel, Chair

6/13/17
Date

Received, Office of the Town Clerk:

Signature

Date JUNE 13, 2017

I, Cynthia Slade, Clerk of the Town of Truro, Barnstable County, Massachusetts, hereby certify that this decision was filed with the Office of the Town Clerk on _____ and 20 (twenty) days have elapsed since the date of filing, and:

☐ No Appeal has been filed.

☐ An Appeal has been filed and received in this office on:_____

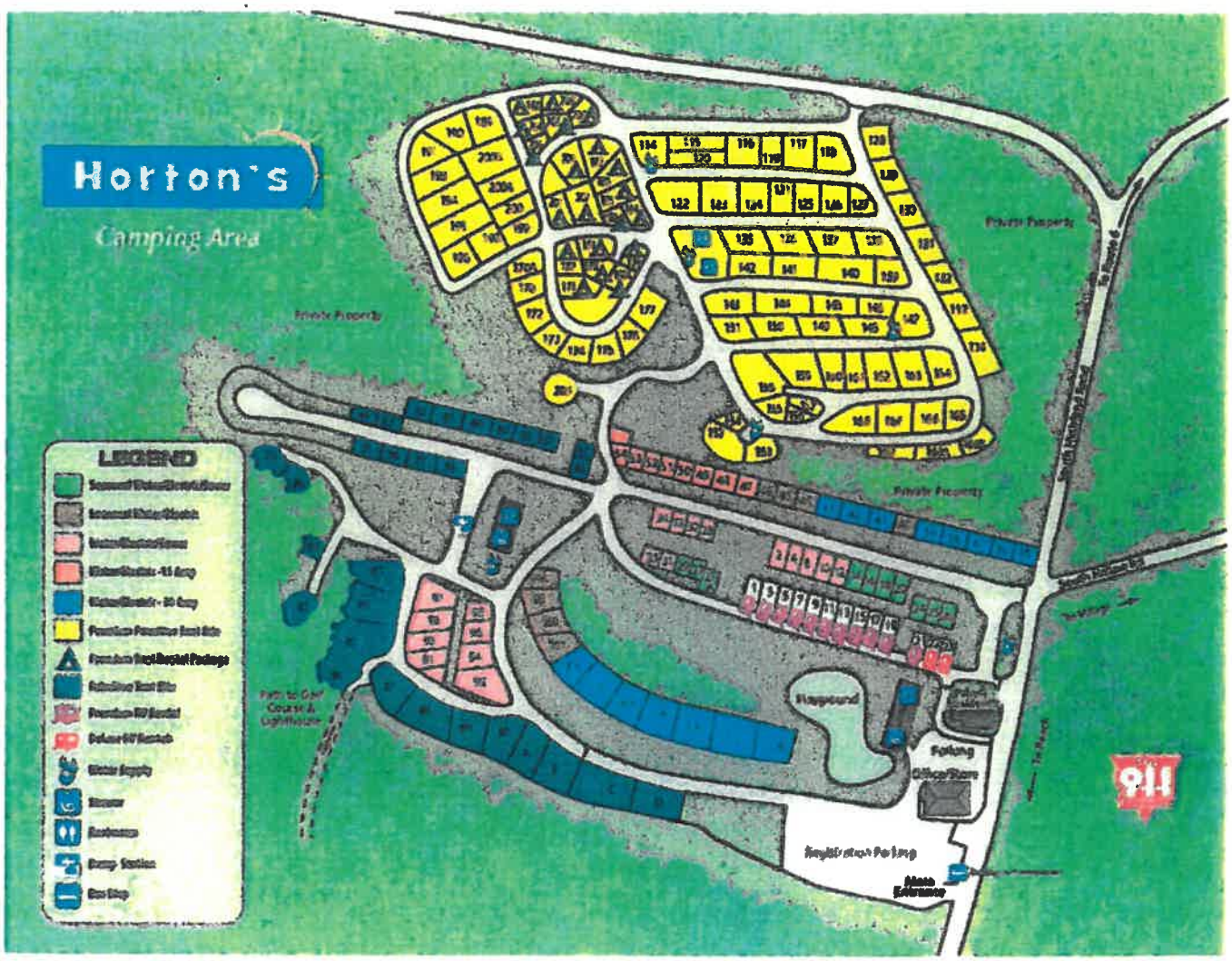
Signature

Date

NOTE: Any person aggrieved by a decision of the Zoning Board of Appeals may appeal to the Superior or Land Court by bringing action within twenty days after the decision has been filed with the Town Clerk of Truro. (Massachusetts General Laws, Chapter 40A, Section 17.)

46 Highland Road North Truro, MA 02652
508-487-1847

Adventure Bound
CAPE COD



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Our Cape Cod Campground located near the town of Truro Massachusetts is the ideal location for a relaxing camping vacation Long frequented by city dwellers looking to unwind on their summer vacations, North Truro is a great home base for RV and camping fans to explore the greater Cape Cod area.

Cape Cod and the surrounding towns of Barnstable County are world-renowned for their pristine beaches, serene countryside, and laidback environment. Biking trails hiking paths, and quaint, walkable towns make the area a haven for adventurous

84% of our Adventure Bound guests are repeat customers and 88% would refer us to a friend.

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