

**ZONING BOARD OF APPEALS  
TRURO, MASSACHUSETTS  
MINUTES  
MONDAY, MAY 22, 2017, 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); S. Areson (Alt).

Also present, Planner Ruffer, Town Counsel Veara.(S. Kelly, Recording Sec.)

Meeting convened at 7 PM by Chairman Perkel.

**Continuation – 2017-006/ZBA – Anne Labouisse Peretz** (applicant), by atty/rep Benjamin E. Zehnder, (owners William Burdick, Richard Vanison, Trs., Dune House Nominee Trust), for 112 N. Pamet Rd., (Atlas Sheet 48, Parcel 1). (Certif. of Title No. 208468, Land Ct. Lot #7, Plan #15097-H.) Applicant is seeking a Variance (w/ref. to Sec. 50.1.A) & Special Permit (w/ref. to Sec. 30.3[B](8), and 30.7. & 50.1(b), and 3) of the Zoning Bylaw, to relocate and reconstruct an existing residential dwelling within the sideyard setback, w/proposed dwelling exceeding allowed height, as per plans filed, as continued from April 24, 2017.

Chmn. Perkel said a request for a continuation was sent by Atty. Zehnder for the applicants, and a Motion was made to continue the petition to June 26, 2017 at 7 PM. Unanimous to continue.

**Continuation -- 2017-007/ZBA – White Sands Beach Club, Maria Kuliopulos**, by agt/atty Edward T. Patten, for 706 Shore Rd., (Atlas Sheet 1, Parcel 5)(Reg. of Deeds title ref: Bk. 415, Pgs. 57-62.) Applicant is seeking a Special Permit w/ref. to Sec. 30.7.A. of the Zoning Bylaw to reconstruct a 17-unit motel building on a pre-existing, non-conforming site (which will result in 47 total units at the motel site), as per plans filed, as continued from April 24, 2017.

Chair Perkel noted those regular members would be voting; alternates Brown and Areson would not be voting.

Mr. Perkel noted he had concerns with the definition of room and was troubled by the definitions of room in the Board of Health regulations. Atty. Reid spoke of an example of a one room combination with 2 bathrooms with one wall. Mr. Perkel asked why should the ZBA accept the definition of room by the Building Inspector; he added, all the building commissioner can do is recommend to the ZBA; the ZBA is here to act on the Building Commissioner's determination; Atty. Patten said he felt the basis on the definition of room by the Building Commissioner is credible. It was asked if there was anything to provide in relation to the definition of the building commissioner of a room. Mr. Perkel explained they have to deal with the count of rooms; in reference to the plans provided he asked if, for example, this had a reference to one room or two. Atty. Patten replied this would be deemed one motel unit; the building commissioner's determination is that it is "one unit." Mr. Perkel noted the room deemed "kitchenette" has 4 walls with a separate bathroom, which becomes a "motel unit." Mr. Todd referred to the unit shown on A.2.0 (unit 70) and said it appears to have two or three bedrooms.

Another issue with definitions is the building code definition of a motel unit. Members also noted a combination of 2 spaces into 1 room on some room layouts; Mr. Hultin added the Board of Health has different definitions of bedrooms in reference to "motel units" in their regulations; he continued, it was unclear how the BOH came up with their definition; he referenced a plan which looked as if spaces were combined into one room; however the plan itself looked like two rooms. Room count discussion continued with opinion offered by Atty. Patten as well. Mr. Perkel added the applicant presents 35 units now and they were asking to add 12 units which would thus equal 47 units. Atty. Veara explained in the context of the application the ZBA has to decide on 47 units or a count greater than 47 units; they had Bldg. Com. Braun's opinion; the ZBA has the right to rule on a threshold number; if they "rule" 47 units, there's nothing else to decide.

Atty Patten disagreed and said this was not an application which was seeking to increase the number of units; also, density does not appear to be at issue. He added statute requires a process if there was a "challenged" issue, and he thought it was fiction that the applicants are requesting a 12-unit increase; he continued, the building inspector's opinion was challenged; therefore they have to go through a process.

Chairman Perkel spoke about abutters' comments on view, and explained there was no protection of "view" rights. He voiced concerns with getting involved with the special permit issuance where he felt a special permit would be for more than 47 units; he referenced a plan with a kitchenette, dinette, bedroom "unit" with 2 bedrooms with 2 baths equalling two (2) rooms. Member Todd said this feeds into a larger question and he said it was hard to envision 47 units on that piece of

land; he did not think they should be starting with a 47-unit part which has a number of non-conformities. Mr. Hultin said he did not know which plans Building Commissioner Braun had reviewed; he felt the plan lacks clarity and he wouldn't know where to begin to count the units. This was one issue; he added, there are other zoning issues, as well. Member Thornley asked about the separate doors in rooms and constructed walls in rooms. Mrs. Kuliopulos noted they do have two-bedroom units and there are other motels in Beach Point with 2 bedroom and 1 bedroom units. Members asked about construction on the foundation; it was explained this was a smaller foundation; Mr. Perkel added, he thought the room count is exceeded, and spoke of the building commissioner's opinion and Board of Health definition of bedroom. He felt they were voting on a project that exceeds the room count.

Atty. Patten opined they seemed to be challenging the Building Inspector, and he disagreed.

At this point Chairman Perkel said they would take a short 10-minute break at 7:35 PM. Meeting reconvened at 7:45 PM.

Mr. Perkel said the Building Commissioner did not make a determination on the room issue and Atty. Patten asked about the objection to room design and said if the walls were removed, would it be considered a single room? And what is the definition of room. Perkel said he did not know how their room is defined and did not think the plan shows a "room." It seemed the building commissioner left the issue wide open.

Mr. Kuliopulos spoke about issues being raised again and said they were losing money and they were asking for relief. Mr. Todd noted he was not prepared to approve anything at this point; Mr. Hultin said they did not have a complete set of plans.

Mrs. Kuliopulos asked whether there was any guidance from the ZBA; Mr. Perkel there is an obligation to provide a complete set of plans; he added, the ZBA does not render advisory opinions. He asked for the Board's wishes at this time as to a continuation or a decision. A Motion was made by Mr. Hultin, 2<sup>nd</sup> by Mr. Perkel to Continue to June 26, 2017 at 7 PM at Truro Town Hall. Unanimous to continue.

**2017-008/ZBA – Stephen Walsh**, by Chester N. Lay, Slade Assoc., Inc., for property located at 13, 10, 3, 7 & 5 Walsh Way, 309 Rte. 6 (Atlas Sheet: 43, Parcels 13, 10, 8, 7, 135 & 134). Applicant is seeking a Variance w/ref. to Sec. 10.4 (definitions: street) of the Truro Zoning Bylaw for a single-turning radius to widen an existing 30-ft. road to a 40-ft. wide road in order to consolidate 2 lots and remove a cottage, as per plans filed.  
(Mr. Brown recused himself from the hearing).

Chester Lay from Slade Associates was present to explain the petition. He referred to Subdivision Control Design Standards of 1989 and said he was here with reference to the Planning Board for property with the entrance at Rte. 6 and Walsh Way; he continued, the 20-ft. radius regarding the transition curb has not been enforced by the Planning Board in 30 years, he was asking for a single curve radius, ie: a single turning radius; it was noted the board would have to make findings of fact and an addendum with proposed findings of fact had been provided by Mr. Lay. Members spoke about the petition; Mr. Hultin asked about requesting a Special Permit rather than a Variance under the circumstances; Mr. Lay explained he would rather not go back to the Planning Board and the findings of fact provided would support a Variance. Planner Ruffer spoke about the Definitive Subdivision presented to the Planning Board and explained a Variance decision is clearer. After further discussion, the following Motion was made:

**Motion (Hultin, 2<sup>nd</sup> Todd):** Move to grant to Stephen Walsh, for property located at 13, 10, 3, 7 & 5 Walsh Way, 309 Rte. 6 (Atlas Sheet: 43, Parcels 13, 10, 8, 7, 135 & 134), w/reference to Sec. 10.4 (definitions: street) of the the Truro Zoning Bylaw for a Variance for a single-turning radius to widen an existing 30-ft. road to a 40-ft. wide road in order to consolidate 2 lots and remove a cottage, as per plans filed. The ZBA includes the language of Finding 1, and Findings 2 through 5 as written, as part of this decision. The ZBA Finds that granting of this Variance is not substantially more detrimental to the neighborhood and is in keeping with the general purpose and intent of the Truro Zoning bylaw, with the following:

(Findings of Fact): 1. The applicants are widening, on paper, the existing thirty-foot-wide ways (Walsh Way and Valentine lane) to a width of forty feet so that the various lots within this compound will front on streets complying with the definition of "street" as defined in the Truro Bylaws, thus obviating the need to file for a Special Permit with the Zoning Board of Appeals every time they propose an alteration to one of their cottages. They are proposing no new road construction 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*.

2. The Truro Building Commissioner and code enforcer has opined, in writing, that the transition curves required under the definition of "street" in the Zoning Bylaws applies to the intersection of the *actual* traveled ways, where they ease access and egress and make it safer, not to the side lines of the layouts, where it would make no sense.
  3. The entrance to Walsh Way has existed in its present state for decades and is safe for the current residential use. The cottage at the northwest corner of Lot 3 is to be removed and Lots 43-7 and 43-8 are to be combined into one lot, Lot 1, as shown on the filed plan. Thus the overall usage of this property will be *reduced*.
  4. If and when Walsh Way is to be used to serve any lots other than Lots 1 through 5 as shown on the filed plan, and if the two transition curve requirement is still in effect and is being interpreted as applying to the actual street side lines and not to the actual traveled ways, the entrance to Walsh Way at Route 6 shall be re-designed to show two transition curves.
  5. The granting of this Variance is consistent with the general purpose and intent of the Bylaw and Planning Board Regulations and with the overall goals of the Truro Local Comprehensive Plan.
- Members voted as follows: Voted in favor: Dundas, Thornley, Perkel, Hultin, Todd. Voted Against: None. Motion Carries: 5/0 Unanimous.

**2017-009/ZBA – Christopher & Jane Clark**, for property located at 1 Higgins Hollow Rd., (Atlas Sheet 46, Parcel 289, Reg. of Deeds title ref: Book 5124, Page 188. Applicants are seeking a Special Permit to a construct a new house to replace a pre-existing, non-conforming dwelling, which has a 30 ft. setback on a lot of 1.37 acres; the portion of house replacing the pre-existing, non-conforming dwelling will have a 30 ft. setback, and the remaining portion of the new house will have a > 50 ft. setback, as per plans filed.

Prior to hearing the petition, Mr. Todd said he was on the Historic Review Board but felt he could hear the petition on an impartial basis; Mr. Perkel noted there was no problem with this and the hearing would proceed.

Mr. and Mrs. Clark were present to explain the petition and background on the property which had been purchased by their grandfather in 1922; they wished to rebuild/renovate and move the structure back; the original structure was built in 1719; they wish to rebuild part of the structure using the existing footprint.

Members reviewed plans; Mr. Thornley asked about the replacement of the barn that had been at the property and whether there was a habitable studio; Mr. Clark replied in the affirmative; Mr. Brown noted the applicants were sensible people with a "feel" for the old Truro and was supportive of the proposal. Since there were no further questions, the following Motion was made:

**Motion (Todd, 2<sup>nd</sup> Perkel):** Move to grant a Special Permit to Christopher Clark and Jane Clark, for property located at 1 Higgins Hollow Rd., (Atlas Sheet 46, Parcel 289)(2017-009/ZBA)Reg. of Deeds Title Ref: Bk. 5124, Pg. 188), in order to construct a new house to replace a pre-existing, non-conforming dwelling, on a lot of 1.37 acres (less than the three-acre zoning required in the district); the portion of the new house replacing the pre-existing, non-conforming dwelling will have 30 ft. setback; the remaining portion of the new house will have a > 50 ft. setback, w/ref. to Sec. 30.7 of the Truro Zoning Bylaw as plans filed, with reference to Felco Site & Sewage Plan of 4/25/17 and accompanying architectural renderings and floor plans. The ZBA Finds said Special Permit is not substantially more detrimental to the neighborhood, and is in keeping with the intent of the Truro Zoning Bylaw.

Voted in favor: Dundas, Thornley, Perkel, Hultin, Todd. Voted Against: None. Motion Carries: 5/0 Unanimous.

#### Other Business

Next regular meeting: June 26, 2017

Meeting adjourned at 8:30 PM

Respectfully submitted,

  
Susan Kelly

