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**ZONING BOARD OF APPEALS
TRURO, MASSACHUSETTS
ZBA MINUTES
MONDAY, JUNE 27, 2016
6 PM - TRURO TOWN HALL
24 TOWN HALL ROAD, TRURO**

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

Meeting opened at 6:07 PM by Chairman Perkel, who explained he would be taking the petitions out of order.

Continuation: 2016-002/ZBA – Stephanie Cady, for property located at 123 Shore Rd., (Atlas Sheet 32, Parcel 14)(Cert. of Title 206586, Land Ct. Lot#LCP11740V, Plan #59). Applicant is seeking a Special Permit w/ref. to Sec. 40.1 of the Truro Zoning Bylaw by bringing the limited business zone in the front of the property back to the residential zone to build a duplex, as per plans filed, as continued from March 21, April 25, 2016.

Ms. Cady was present with plans requested at the previous meeting; she explained she had floor plans drawn and height elevations will also be provided. Mr. Perkel noted the Building Commissioner had reviewed the proposal and also spoke of the zoning districts involved. After review of the plans provided, the following Motion was made:

Motion (Hultin, 2nd Brown): Move to Grant to Stephanie Cady for property located at 123 Shore Road, Atlas Sheet 32 Parcel 14 (2016-002/ZBA)(ref: Certif. Of Title: 206586, Land Ct. Lot#LCP11740V, Plan #59), a Special Permit w/ref. to Sec. 40.1 and Sec. 20.5 of the Zoning Bylaw (lots in 2 districts) by bringing the Limited Business Zone in the front of the property back to the Residential Zone to create a lot of suitable size and shape to support a duplex dwelling, with reference to plans submitted to the ZBA by the applicant and dated 6/16/16, as drawn by dq, referenced as A1,A2,A3,A4, A5. The Board Finds said Permit is in keeping with the intent of the Truro Zoning Bylaw and is not substantially more detrimental to the neighborhood.

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

2016-008/ZBA – Clinton Kershaw, for property at 9 Highland Ave., (Atlas Sheet 22, Parcel 35), whereby applicant was requesting a Variance w/ref. to Sec. 10.2 of the Truro Zoning Bylaw, for a sustaining wall which would be 6 inches from the property line, where 25 ft. is required,

Mr. Kershaw was present to explain the petition, which included the sustaining wall with a fence on top. Plans were reviewed and members discussed the difference between retaining and sustaining walls; Mr. Todd asked if the lot was graded and Mr. Kershaw said it was. Mr. Hultin's problem with the project was the proposal of a wall on top of another wall and inquired about the "hardship" aspect in the appeal. Mr. Kershaw explained the topography of the land was the hardship, and he noted he had read the 'cold frame' definition in the bylaw and also said there were many sustaining walls in his immediate area. Mr. Todd spoke of fence definitions in the bylaw and explained a sustaining wall does require a permit, and there is no allowance for construction of a "fence" on top of a "fence." After discussion on variances and setbacks and whether the wall could have been built if there were no dirt buildup behind the wall; Mr. Brown noted the proposal did not meet the requirements of a variance and he could not approve the proposal.

Mr. Perkel suggested the options available, given the unfavorable viewpoint by members, and the following Motion was made:

Motion (Perkel, 2nd Hultin,): Move in the matter of Clinton Kershaw, for property at 9 Highland Ave., (Atlas Sheet 22, Parcel 35)(2016-008), to allow the Withdrawal of the petition without prejudice.

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

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;

Present for the petitioner were Habitat representatives Zola, Atty. Brodie, Engineer O'Reilly. Also, Truro Town Counsel, E. James Veara was present as well as Atty. David Reid.

Atty. Brodie provided background of the appeal including prior ZBA approval, court appeal and remand which annulled the ZBA decision and issued an Order of Remand; there had been project grade and drainage issues and Findings of Fact were to be issued on June 27 and before Aug. 11; there had been a time extension and at this point they were to consider project grade and drainage and rules and regulations with respect to grade. He spoke of Exhibit K which had been provided and which showed the stormwater plan, as provided by J.M. O'Reilly, it was noted this was usually completed after a Comprehensive Permit is granted. It was noted drainage calculations were also provided and the site plan was updated, as were the architectural plans which showed gutters and downspouts. Because of the calculations, they were no longer seeking a waiver with respect to the drainage aspect, and thus the removal of the storm water drainage as a basis of approval of the plan is no longer germane, and the issue is whether a Comprehensive Permit is granted. He referred back to page 5 of the initial narrative and also spoke of compliance with the ridge height. Chairman Perkel noted Building Commissioner Braun had stated the height is within the constraints of the bylaw, thus a waiver is not required in that regard; he also read the memo from Mr. Braun to J.M. O'Reilly. Mr. O'Reilly spoke of the drainage and potential washout at the appealing abutter's property; he explained drains from Rte 6 are at the same point, but leaching points have changed and drainspouts and drywalls to contain runoff have been added; they have measured the erosion level and they have created a back grade with silt fence on the south side; work on the top of the slope will provide containment; they will use an erosion control blanket and there would be a site inspection report; the stormwater mitigation plan has been firmly vetted.

In regard to the height, the engineer's calculations and building commissioner's calculations are within inches of each other.

Members reviewed and discussed the plans; Mr. Hultin spoke of the steepness of the grade and asked about the relationship between the height of the building and compliance with the height requirements of the bylaw; he also asked if there were any filling or excavation at the side of the site, was it compliant with zoning. The response was yes, it did comply. Ms. Allee asked about vegetation plans; it was explained there was a berm; the site had been seeded and plantings would cover the slope shown on the plan.

It was noted the Planning Board had sent a letter of support of the project.

Since there were no other questions from ZBA members, Atty. Reid, representing abutter Connors, spoke.

He said there should be a lot more review; and he felt the Planning Board should have provided a full review of the site and the PB letter of support was not sufficient, and the 40B application had not been reviewed in detail by the Board of Health. He continued, the drop of the lot is approx. 66 ft., and abutter Connors is at the bottom of the slope. If all members had not visited the site, he suggested they do so. He continued, not only does the slope pose a threat to the safety of Ms. Connors, but the earlier decision had little if anything about the slope of the land in question. The applicant has not met the stormwater regulations' requirements.

Atty. Reid noted an analysis of the O'Reilly plans had been provided by another engineer, and this report was distributed; he said the road proposal presented shows gravel on the top part and sand on the lower portion which would cause silt and sand to be carried to the site below; the driveways are pitched away from the road with runoff going downhill, therefore, he felt this was not a property designed plan and he compared the slope to a "Black Diamond" designed ski slope; the plan with the septic system site and reserve area has a natural slope ratio of 2 to 1; rather the slope ratio should be 3 to 1 or 4 to 1; the stormwater runoff design is not adequate for the southern portion of the area; the slope proposed is the issue at hand.

It was noted there were no further comments from the fire chief, and the road does not have a 'turn-around;' in conclusion, this was not a well thought-out plan, or good site design.

Chmn. Perkel asked for any other comments; there were no additional comments. In regard to Mr. Perkel's question about how much of the abutter's land touched the proposed housing site, the response was, a 'point.'

The memorandum from the Historical Commission regarding the project was noted as well.

Members asked about the project; Mr. Todd noted the abutting property location is at the base of two ridges, thus, there would be houses above the habitat homes, as well. Mr. Hultin spoke of contour maps and members spoke about runoff at Avery Way. Topo maps were reviewed; members asked about input from Habitat engineers; Mr. Hultin noted there might be some mitigation on the lot that could help with the aforementioned problem. Members also discussed grades created to address the height. Ms. Allee asked how the properties would be maintained by the residents of the homes and there seemed to be many issues for analysis. Members Brown and Dundas felt they would like to hear further from the Habitat engineer.

Engineer O'Reilly and Atty. Brodie spoke. Mr. O'Reilly set the septic systems meet the setback requirements and he provided more information on the Title 5 septic system and its relation to the site.

Planning Board subdivision requirements had been met; the proposed drainage meets the requirements of 50-year storm statistics; the amount of runoff water calculated now will not increase in the future; runoff maintenance was addressed on the plan. Engineer O'Reilly concluded the plans are more than adequate.

Atty. Veara spoke about the application and addressed Atty. Reid's comments about BOH and PB review; he noted under C. 40B, there is no requirement for review by the Planning Board or Board Health. He continued, all appropriate parties received notice; Planning Boards are not required to provide input on Comprehensive Permit applications; they were not operating beyond what is required by statute; not one drop of water from the habitat site comes onto the abutter's property; in regard to stormwater runoff; the gutters, etc., shown on the plans would be sufficient for the project in issue.

He continued, detailed Findings of Fact must be provided and there must be justification in their written decision adequate to support said Findings.

He spoke of the Court Memorandum and extension of time given.

At this point Chmn. Perkel asked for any other comments. Resident Citron of Resolution Road wondered whether anyone had gone to the site and she was distressed by the "advocacy role." Mr. Nardon, voiced concerns about runoff to the Connors property. Mr. Colburn, spoke of his work with the CDP (Community Development Partnership), a non-profit agency and praised Habitat for their outstanding work in terms of affordable housing on the Cape.

After further discussion, members concurred they would prefer a continuation and a Motion was made by Mr. Brown; 2nd by Mr. Hultin to Continue the petition to the ZBA meeting of July 18, 2016 at 7 PM at Truro Town Hall. 24 Town Hall Road, Truro. 5/0 Unanimous.

Motion made to adjourn by Allee; 2nd by Perkel. 5/0, Unanimous.

Meeting adjourned at 8 PM.

Respectfully submitted,


Susan Kelly