

**TOWN OF TRURO  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
November 26, 2018  
TRURO TOWN HALL**

**Members Present:** Chair-Bertram Perkel, Art Hultin, John Dundas, Fred Todd, John Thornley, Alternate-Susan Areson

**Members Absent:** Chris Lucy

**Others Present:** Interim Town Planner-Jessica Bardi, Atty. Sarah Turano-Flores, Atty. Benjamin Zehnder, Yvette Dubinski, Richard Sullivan, Joanne Barkin, Roland Letendre, Joan Holt, Atty. Justin Perrotta

Chair Perkel called the meeting to order at 5:30 pm.

**Continuation-2018-013/ZBA – Kenneth Shapiro, for property located at 405 Shore Road (Atlas Sheet 10, Parcel 5, title reference: Book, 25631, Page 201). Applicant seeks a Special Permit w/ref to Section 30.7 of the Truro Zoning Bylaw for the alteration of a pre-existing, non-conforming garage by replacing the existing structure with a new dwelling and garage structure.**

Interim Planner Bardi stated that a continuance was requested for December 17, 2018 via an email.

**Member Hultin made a motion to continue the Public Hearing for 2018-013/ZBA to December 17, 2018.**

**Chair Perkel seconded.**

**So voted; 5-0-0, motion carries.**

**Continuation-2018-003/ZBA – Susan Lewis Solomont, by Atty Sarah Turano-Flores, for property located at 37 Stephens Way (Atlas Sheet 58, Parcel 1, title reference: Book 10986, Page 185). Applicant is seeking to overturn the Building Commissioner's decision to not issue a permit and is also requesting a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref. to Sec. 10.2 and 50.1A of the Truro Zoning Bylaw to construct a single-family dwelling.**

Member Hultin noted he was recusing himself from this hearing and would sit in the audience.

Atty. Sarah Turano-Flores came before the Board. She is representing her client, Susan Lewis Solomont. With her is David Michniewicz, from Coastal Engineering, who designed the site plan, and also Mr. Chet Lay, who came out of retirement to submit an affidavit outlining the process that was followed in 1993 and 1994, relative to the creation of the approval of the subdivision plan back then. The affidavit was submitted after the last time they were before the ZBA, which was August 26<sup>th</sup>. Atty. Turano-Flores believes the affidavit puts into context the nature of those proceedings. She continued to list some additional information which had been submitted upon request of the Board. She would like to give a brief overview of the three forms of relief. Chair Perkel stated that the hard issue before the Board is the variance and he'd like her to address that first.

Atty. Turano-Flores said that if the Board does not feel it's buildable of-right, and if they don't believe it's eligible for a Special Permit, then she believes it's eligible for a variance. The variance standard is in the State Statute 40A, Section 10, and is three-pronged.

1. The need for the variance is owing to circumstances related to soil conditions, shape, or topography that especially affect this lot and not the neighborhood as a whole. With respect to this prong, they feel that both the soil conditions and the topography are at issue here. That is illustrated in the affidavit provided by Mr. Lay. The topography leading down into the wetland is very steep and is depicted on the affidavit as well.
2. If the variance is not given, Ms. Solomont would suffer substantial hardship. An itemized list has been provided in their narrative.
3. Whether desirable relief can be granted without substantially derogating from the purpose and intent of the Zoning Bylaw. Atty. Turano-Flores believes it's best to go back to the Special Permit criteria which also speaks to whether it will be substantially more detrimental to the neighborhood.

Chair Perkel asked what Variances they are looking for. Atty. Turano-Flores stated that first the ZBA would vote that they agree with the Building Commissioner that there is no frontage. As a result of that vote they would need a variance from the frontage requirement.

Member Areson is troubled by the appearance of the road. When you drive up it, it does not appear to be suitable for building. Atty. Turano-Flores said that the owner has an easement in the full extent of the subdivision plan that created this lot. They could, in theory, go out tomorrow (assuming the Conservation Commission gave approvals where needed) and construct to the full 40-foot width.

Member Areson understands, but it would still be near the wetlands, and they would need Conservation Commission approval. Atty. Turano-Flores agreed, if they are within 100 feet, however it was moved to over 100 feet from that wetland and the constructed portion in that location and does not need Conservation approval. The plan profile was revised to be located outside the 100-foot buffer zone to the inland wetland. Chair Perkel asked, assuming they get the variance for moment, where would the house be placed? Atty. Turano-Flores produced a plan and designated the location to the Board.

Chair Perkel addressed the audience and asked if anyone would like to speak to the project, in opposition.

Atty. Justin Perrotta approached the Board. He represents the abutting property owners at 21 Cooper Rd. He had attended the last meeting addressing this project. On the variance request, he thinks the problem is; if they approve a variance here, they will have everyone coming in to get a variance because their property is near a wetland, or they're on a road with a little rise in it. He does not feel this property is unique enough to grant a variance. He added that thinking a lot is buildable when it isn't, is not a sufficient hardship to grant a variance. Atty. Perrotta included that counsel left off one of the key elements of the bylaw which is to ensure roads with adequate access of 40-feet in width. Granting a variance on a much smaller road doesn't satisfy the spirit of the bylaw. For the reasons mentioned, they do not feel a variance should be granted.

Joanne Barkin came up to speak. She lives on Stephens Way. She referred to the Klein case in 2008 where Susan Solomont was one of the plaintiffs and she thinks the record will show that Ms. Solomont signed various documents indicating that she believed Stephens Way was unsafe. She would like to ask whoever is in a position to speak for her, perhaps her lawyer, to speak to this. She feels there is an important contradiction there, and she would like that clarified.

Chair Perkel then asked if there was anyone in the audience to speak in favor of the project. No one came forth.

Chair Perkel closed the evidentiary portion of the public hearing to audience comments and announced that the Board would go into the deliberative portion of the hearing.

Member Areson stated that they had competing opinions from different Building Inspectors, and Town Counsel. Chair Perkel has a problem with the recounting of people's thoughts, and what they said, from 20 years ago. Member Areson believes there is some hardship shown, as Ms. Solomont has paid taxes on this property, as a buildable lot, since she purchased it.

Member Todd feels the same way. He's looking at the property as a buildable lot.

Member Dundas agrees that it is a buildable lot based upon the evidence presented before the Board. He thinks that if they're going to list the criteria, then absolutely it's a hardship. The applicant pays taxes on this lot.

Member Thornley has always felt this was a buildable lot, by-right.

Chair Perkel stated it appears that the Board is of the same opinion on the hardship side. He wished to discuss the effect of the variance by topography which is unique to the site.

Member Todd thinks it's a toss-up. He thinks there are a lot of sites in the area where wetlands and topography are involved. He does not find it compelling. Member Areson agrees with what Member Todd stated.

Member Dundas confirmed that the structure would take up 3 percent of the 3-acre lot. He believes the owner is taking great care and consideration to the effect it would have.

Member Thornley reiterated that he believes the lot is buildable by-right.

After a five-minute break, deliberation continued.

Chair Perkel stated in order to say it's a buildable lot by-right, they needed to find 150 feet of frontage, and it doesn't exist. If they find 150 feet of frontage, then they can overturn the decision of the Building Commissioner. Without finding that frontage, they would need to discuss whether the property is entitled to a Special Permit.

Chair Perkel believes there are three items the Board needs to determine in order them to grant a frontage variance.

1. The unique issues presented by the topography.
2. Hardship.
3. Purpose and intent of the bylaw, which is derogation of the neighborhood.

When it comes to the hardship, Chair Perkel thinks there is substantial opinion. At least 4 members (probably 5) would impose a hardship. He then asked if the topography is such that it's unique to this property. He does feel there are a lot of topographical issues. There was substantial agreement among the Board members that there were unique topographical issues.

A 15-minute break was taken to allow Counsel to draft a motion.

**Chair Perkel made a motion to recess for fifteen minutes.**

**No second.**

**So voted; 5-0-0, motion carries.**

Chair Perkel called the Board back in session at 6:32pm. He went over the drafted motion and made some amendments. Chair Perkel would like to propose the following; see if the Board has any more discussion on the variance issue and then he'd like to ask for a vote, incorporating the Principals and text (where relevant) in the document they are currently reviewing. He also feels they should draft an opinion which will come back to them at their next meeting for signing. That would moot the two applications before them (the building permit and the special permit), and they should deny both. Member Todd asked if they would need an extension. Interim Planner Bardi stated she would ask the applicant's counsel for an extension.

**Member Todd made a motion in the matter of 2018-003/ZBA-Susan Lewis Solomont, for property located at 37 Stephens Way, to grant the applicant's request for a Variance from frontage requirements set forth in Section 50.1 of the Truro Zoning Bylaw requiring 150 feet of frontage on a street, as defined in Section 10.4 of said bylaw based on the plans submitted with the application and the following findings;**

1. There are circumstances relating to soil conditions and topography that especially affects such land, but not effecting generally the zoning district in which it is located including, but not limited to, steep slope and a wetland on the property which both effected the ability of the property owner to fully construct the road to the extent shown on the 1994 Definitive Subdivision Plan which created the lot.
2. Literal enforcement of the provisions of the Bylaw in this case would result in a substantial hardship, financial or otherwise, by Ms. Solomont including, but not limited to the fact that she first purchased the property in 1997 and has been paying taxes on it as a buildable lot ever since, and would be left with an unbuildable lot if the Variance is not granted. Note that two prior Building Commissioners opined that the lot was buildable.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Bylaw, including but not limited to, the fact that a single-family home is a use allowed by-right in the underlining zoning district. The proposed construction shall be three (3) percent of the lot area, and the proposed house is situated on the lot outside the 100-foot buffer zones to the adjacent wetlands.

**Member Thornley seconded.**

**So voted; 5-0-0, motion carries.**

Chair Perkel announced that the other two applications before the Board were essentially mooted.

**Chair Perkel made a motion to deny the application and to reverse the Building Commissioner's decision.**

**Member Dundas seconded.**

**So voted; 5-0-0, motion carries.**

**Member Dundas made a motion in the matter of 2018-003/ZBA-Susan Lewis Solomont, for the property located at 37 Stephens Way to deny the applicant's request for a Special Permit pursuant to G.L. Chapter 40A Section C, Paragraph 1 in the Truro Zoning Bylaws Section 30.7A because the lot is not lawfully pre-existing, non-conforming, and the lot will not be used in the same manner for the purpose previously used and/or the single-family dwelling will be substantially more detrimental to the neighborhood than the existing non-conforming lot and/or the proposed single-family dwelling will not exist under the general purpose and intent of the bylaw.**

**Chair Perkel seconded.**

**So voted; 5-0-0, motion carries.**

**Continuation – 2018-002/ZBA – Timsneck LLC, by Atty. Benjamin Zehnder, for property located at 10 Thornley Meadow Road (Atlas Sheet 53, Parcel 87, title reference: Book 30529, Page 134). Applicants are seeking a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref to Sections 10.4 and 30.7B of the Truro Zoning Bylaw for additions to a pre-existing, non-conforming single-family dwelling.**

**2018-012/ZBA - Timsneck LLC, by Atty. Benjamin Zehnder, for property located at 10 Thornley Meadow Road (Atlas Sheet 53, Parcel 87, title reference: Book 30529, Page 134). Applicant seeks a Variance w/ref to Sections 10.4 and 50.1A of the Truro Zoning Bylaw for 14.27 feet of lot frontage on Button Hill Road or in the alternative, 45.82 feet of lot frontage on Thornley Meadow Road.**

Chair Perkel stated that he was in receipt of a letter from Counsel asking to withdraw both proceedings without prejudice.

**Member Hultin made a motion to allow without prejudice both 2018-002/ZBA-Timsneck LLC, and 2018-012/ZBA-Timsneck LLC.**

**Member Thornley seconded.**

**So voted; 5-0-0, motion carries.**

**Member Thornley made a motion to adjourn at 6:50pm.**

**Chair Perkel seconded.**

**So voted; 5-0-0, motion carries.**



**Respectfully Submitted,  
Noelle L. Scoullar**

