



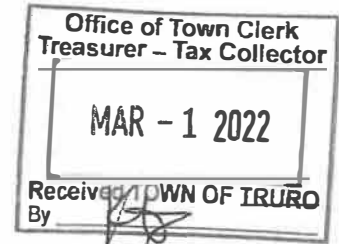
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

June 21, 2021 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



Members Present (Quorum): Art Hultin (Chair); Fred Todd (Vice Chair); John Dundas; Darrell Shedd

Members Absent: Chris Lucy (Clerk); Heidi Townsend

Other Participants: Barbara Carboni – Town Planner and Counsel; Ben Zehnder (Attorney for the Applicant), Brad Malo (Engineer for the Applicant); Dan Costa (Architect for the Applicant)

Remote meeting convened at 5:30 pm, Monday, June 21, 2021, by Town Planner and Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 18 and is being recorded. Town Planner and Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment.

Public Comment Period

No members of the public offered comment.

Public Hearing Continued

2020-009/ZBA – Anne Labouisse Peretz; William T. Burdick and Richard C. Vanison, Trustees, Dune House Nom. Tr. for property located at 112 North Pamet Road, Truro, MA (Atlas Map 48, Parcel 1, Certificate of Title Number 208468, Land Ct. Lot #7, Plan #15097-H). Applicant seeks a Special Permit under M.G.L. Chapter 40A, §6 and Section 30.3(8) of the Truro Zoning Bylaw for removal and replacement of non-conforming single-family dwelling (height) on a non-conforming lot (street frontage).

Chair Hultin opened the hearing and gave Mr. Zehnder the opportunity to provide any information. Mr. Zehnder in his opening statement noted that only four Members of the ZBA were present this evening and he asked Chair Hultin if Chair Hultin could poll the Members present before a vote was taken on this matter. Chair Hultin and Town Planner and Counsel Carboni agreed with this request without objection.

Mr. Zehnder updated the Members that following the Members' questions from the previous hearing, answers were submitted by the Applicant in response to those questions. Additionally, Mr. Malo had submitted a revised Site and Grading Plan to show the heights of the walls in terms of proposed spot elevations and Mr. Costa provided plans with the walls with elevation heights along with the vegetation. The Applicant also submitted a Blue Flags Planting Plan prepared by Ms. Theresa Sprague (botanist) that indicated that the walls would be obscured by the plantings and natural vegetation. Mr. Zehnder hoped that the submitted materials answered the ZBA's questions and concerns.

Mr. Zehnder reminded the Members that the new house is more than 1,000 gross floor square feet less by right, the house will be oriented, so it meets all zoning requirements, setback, height requirement and the project is fully compliant. Mr. Zehnder emphasized the only reason for this hearing is to address the issue of the lack of street frontage that under the current Bylaw required a Special Permit. Mr. Zehnder added that this matter would be heard by the Planning Board this Wednesday, and he hoped that the Special Permit would be granted by the ZBA prior to Wednesday's meeting.

Chair Hultin thanked Mr. Zehnder and led the follow-up questions with Mr. Zehnder, Mr. Malo, and Mr. Costa.

Members asked additional questions surrounding the following topics: the wall calculations, height calculations for the elevation of the house, the pictures of the project site which were from the Applicant's original build, the inclusion of anti-wall falling fencing, the inclusion of the Blue Flags Planting Plan, the description of the hardscape patio at grade (Town Planner and Counsel Carboni noted that this was included in the draft decision as a condition for granting the Special Permit), the grade change from the front porch to the back of the home and the stability of the slope, adherence of the retaining walls to the 25' setback, the sequence of events for the demolition of the current home and the new construction and possible impact from vibrations to the ground activity and coastal bank, relocation of the septic system that will be further away from the coastal bank, the issuance of the Certificate of Occupancy for the new structure until after the old dwelling's demolition, the impact of the demolition process (to include the basement) on the erosion of the coastal bank around the project site, and the grading plan for the regrading of the existing home site.

At this point, Chair Hultin opined that based upon the discussion there was a consensus of support for the new plans and that it would be appropriate to poll the Members in attendance. There were no objections. The poll result was unanimous support by the Members. Town Planner and Counsel Carboni asked Chair Hultin to give an opportunity to members of the public who would like to comment on this matter. There were no comments offered by members of the public.

Chair Hultin and the Members then discussed the possibility of conditioning the sequence of events for demolition and construction for Special Permit approval to which Mr. Zehnder expressed his opposition to ZBA's imposing such a condition. Town Planner and Counsel Carboni said that she did not share Mr. Zehnder's opinion and that the ZBA could establish that condition if they decided it was necessary.

Member Shedd noted that there was a member of the public, Ms. Amy Wolff, who was attempted to ask a question via messaging as she had technical issues. Member Dundas read her question to the Members: Has the ZBA determined that the retaining walls will allow the movement of the sands up straight as the Cape Cod Conservation Commission (CCCC) will not review?

Mr. Zehnder opined that the CCCC has no jurisdiction over this project and that the movement of sands (and other environmental issues) do not fall under the ZBA's purview.

At this point, Ms. Amy Wolff (a neighbor from 97 North Pamet Road) joined the hearing by telephone and asked if not the ZBA, the Planning Board, or the CCCC, what body is examining the health of the coastal bank with the change of grade, addition of retaining walls and what the impact of the erosion on the coastal bank? Chair Hultin replied that the retaining walls would prevent the erosion. Vice Chair Todd then asked if Mr. Malo would like to respond and Mr. Zehnder stated his objection as this was not

an engineering question but a legal question. Chair Hultin asked Mr. Malo if he wished to respond, and Mr. Malo replied that retaining walls will have little or no negative impact on the environment.

Chair Hultin asked Town Planner and Counsel Carboni if there was any other member of the public who would like to comment, and she replied that there were none.

Chair Hultin then led the review of the application for the hearing, the proper submission of supporting materials and revised plans, and the draft decision document before a vote by the ZBA Members. Chair Hultin noted that it would be necessary to remove items from the draft decision document which are not part of the actual decision. Members discussed the potential removal of previously submitted documents which had been replaced by revised documents yet decided to keep them as part of the complete application file.

Town Planner and Counsel Carboni read a proposed motion that she recommended for the approval of the Special Permit. Vice Chair Todd suggested reading aloud the draft decision prepared by Town Planner and Counsel Carboni and allowed Members to make recommended edits. Chair Hultin invited Vice Chair Todd to begin starting with the Findings of Fact, Findings Under Zoning Bylaws, and Conditions with input from Mr. Zehnder.

A discussion ensued when Member Shedd noted that Mr. Zehnder earlier had stated that he had hoped that the Applicant received ZBA approval of the Special Permit before the Planning Board's hearing this Wednesday. Chair Hultin suggested an approval of the Special Permit this evening with the language that qualifies the approval of all the conditions of the Planning Board presuming they are not contradictory to the ZBA's findings to which Mr. Zehnder objected as each body's approval is based on separate Bylaws. Town Planner and Counsel Carboni cited Bylaw §70.4.B Residential Development that stated the Planning Board goes first in the process and Mr. Zehnder stated that was applicable for obtaining a building permit application and not a Special Permit. A review of the Bylaw was interpreted by Chair Hultin and Member Shedd that approval could be granted before the Planning Board hearing. Vice Chair Todd stated that he agreed with the conclusions made by the other Members. Chair Hultin asked if there were any other questions from Members and there were none. Chair Hultin took another poll of Members and Members unanimously indicated that they supported this project.

Member Shedd made a motion to close the public hearing in the matter of 2020-009/ZBA.

Member Dundas seconded the motion.

So voted, 4-0, motion carries.

Chair Hultin announced that the public hearing in the matter of **2020-009/ZBA** was closed.

Member Dundas moved that in the matter of 2020-009/ZBA the Special Permit is granted, and approval of the draft decision as amended during this hearing.

Member Shedd seconded the motion.

So voted, 4-0, motion carries.

Chair Hultin announced that the Special Permit was granted, and Mr. Zehnder thanked the Members for their decision before his departure. Chair Hultin thanked Town Planner and Counsel Carboni for her work this evening.

Chair Hultin made a motion to adjourn at 7:21 pm.
Vice Chair Todd seconded the motion.
So voted, 4-0, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

