



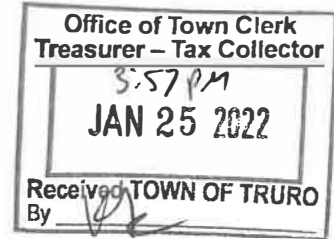
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

April 26, 2021 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



Members Present (Quorum): Art Hultin (Chair); Fred Todd (Vice Chair); Chris Lucy (Clerk); John Dundas; John Thornley; Darrell Shedd (Alt.); Heidi Townsend (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner and Counsel; Liz Sturdy – Truro Office Assistant; Anne Peretz (Applicant); Ben Zehnder (Attorney for Applicant); Brad Malo (Engineer for the Applicant from Coastal Engineering); Dave Michniewicz (Civil Engineering Division Manager at Coastal Engineering representing the Applicant)

Remote meeting convened at 5:30 pm, Monday, April 26, 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).

2020-010/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 Variance under M.G.L. Chapter 40A, §10 and Section 50.1(A) of the Truro Zoning Bylaw for removal and replacement of a single-family residential dwelling 5 feet from southerly lot line where minimum setback distance is 25 feet.

Chair Hultin opened the hearing and gave Mr. Zehnder the opportunity to provide an update on these two matters. Mr. Zehnder announced that this evening that he would request from the ZBA a move to approve a withdrawal of the request of the Variance (**2020-010/ZBA**) without prejudice. Mr. Zehnder

explained that after the previous appearances in front of the ZBA and the Planning Board, the Applicant has now moved the home back from the southerly lot line, so it is now compliant to the setback requirements. Additionally, the Applicant has also lowered the home to 30' so as presented to the ZBA it is now a fully conforming structure dimensionally. Mr. Zehnder asked Chair Hultin to consider this request at an appropriate time during this hearing.

Mr. Zehnder added that the only relief requested now is for the ZBA to approve the Applicant's request for a Special Permit for alteration of a single-family residence. Mr. Zehnder stated that new alterations have been made since he last appeared, and those alterations are now in front of the Members. The new engineering plans are dated April 12, 2021, and the architectural plans are dated March 29, 2021, for retaining walls, and two plans for possible locations dated April 4, 2021.

Mr. Zehnder noted that the Applicant has now reduced the size of the house to 2,590 square feet of gross floor area which is nearly 1,000 square feet below the maximum allowable gross floor area of 3,660 square feet of gross floor area for this size lot. Furthermore, the Applicant, at the request of the Planning Board, has redesigned the home to use retaining walls on the north side and the west side so that the house could be built without additional cutting into the land and the removal of existing vegetation. Mr. Zehnder stated that these plans were submitted to the Planning Board, but the Planning Board had additional questions about the north side retaining wall, so the Applicant is exploring other possible solutions. Mr. Zehnder stated that he was hopeful for the approval of the Special Permit in front of the ZBA as presented with the one proviso that the developing alternative north side retaining wall solution be approved later by the ZBA. Mr. Zehnder added that a comprehensive Restoration Plan has been prepared by Theresa Sprague and that the Applicant has received a Massachusetts Endangered Species Act letter stating that no endangered species would be affected by this project. Mr. Zehnder concluded by asking Chair Hultin for approval of the Special Permit.

Chair Hultin led the discussion with the Applicant and Members on questions and topics of concern such as the recommended two retaining wall solution versus a single retaining wall solution, alternative house locations on the property, the nature of the patio including grade and materials, the prepared calculations for the height of the structure and the requirement of an elevation certificate, the potential for future modifications of the patio by adding a pergola or even turning it into an enclosed room adding additional livable space, the concern that the retaining walls are actually sustaining walls which are not permissible under the Bylaw, the issue of bringing in additional fill into the Seashore District to create a yard, the impact on the Bayberry Hill neighborhood in regard to the alteration of the property and those residents' water views, the question if excavation for a single-family dwelling constitutes backfill, the question if the limit of work will have an erosion barrier around it, and the clarification of the use of an approved EPA herbicide for the killing of an invasive plant species on the property.

Chair Hultin then invited Ms. Peretz to comment or add anything but Mr. Zehnder stated that he did not believe that she was on the line.

Chair Hultin commented that he believed that people may use their property to the limit of the law and he further opined that the ZBA, in his view, must decide if it is within the law the way an owner wants to use a property or construct something along with the method, they want to use to do it.

Mr. Zehnder cautioned the Members that the Applicant had no legal obligation to preserve the water views for the residents of Bayberry Hill and was not obligated to redesign her home to accommodate those views for their benefit.

Town Planner and Counsel Carboni noted that contradictory to Mr. Zehnder's opinion the ZBA may indeed consider visibility as a detriment to the owners of Bayberry Hill. Town Planner and Counsel Carboni stated that she agreed with Mr. Zehnder that a certain amount of filling was allowed in the Seashore District for the construction of a single-family dwelling. Chair Hultin asked Town Planner and Counsel Carboni if this topic should be considered by the Planning Board instead of the ZBA and Ms. Carboni replied that the Planning Board and ZBA should consider it.

Member Lucy expressed concern as to what retaining wall solution the Applicant would decide upon and what those materials would be. Mr. Zehnder replied that the solution will be two retaining walls and those plans are being developed. Mr. Zehnder added that the materials will be included with the updated plans and submitted to the Planning Board and ZBA.

Vice Chair Todd reinforced the necessity of accurate information for the dwelling's height and additional retaining wall information to include the plan to prevent the walls from falling.

Chair Hultin asked if there was any member of the public who wished to comment on this matter. Ms. Amy Wolff commented that she is a neighbor in the Seashore District and that she appreciated the ZBA's consideration and thoughtfulness. Ms. Wolff expressed concern about the retaining walls, and she asked that there would be careful consideration by the ZBA in this matter. Ms. Wolff thanked the ZBA for listening to her concern.

Chair Hultin then reviewed the detailed information that the Members asked Mr. Zehnder to provide to the ZBA. Chair Hultin then asked that the Applicant to request a continuance to another date and Mr. Zehnder asked for a continuance to May 24, 2021.

Member Lucy made a motion to continue the matter of 2020-009/ZBA to May 24, 2021.

Member Shedd seconded the motion.

So voted, 7-0, motion carries.

Chair Hultin announced that the hearing is continued until May 24, 2021, at 5:30 pm.

Mr. Zehnder then requested the approval of the withdrawal without prejudice regarding the Variance request of **2020-010/ZBA**.

Chair Hultin made a motion to approve the withdrawal without prejudice of 2020-010/ZBA.

Vice Chair Todd seconded the motion.

So voted, 7-0, motion carries.

Following the unanimous vote, Chair Hultin announced that the Applicant is allowed to withdraw without prejudice. Mr. Zehnder thanked the Members and departed the meeting.

Town Planner and Counsel Carboni announced that she was working on a Planner's Update to give the team updates for all ZBA business.

Chair Hultin noted that several appointments of Members of the ZBA will expire in June and those individuals have requested that the Select Board reappoint them. Chair Hultin said that one Member

may move to another Board so Members should keep that in mind as well as the election of Board officers once a new Member is appointed.

Chair Hultin announced that the next meeting was scheduled for May 24, 2021, at 5:30 pm.

Member Thornley made a motion to adjourn at 6:38 pm.

Member Lucy seconded the motion.

So voted, 7-0, motion carries.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

