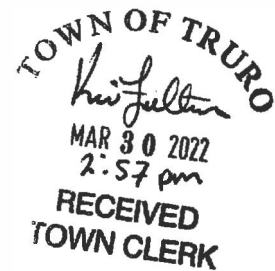




**TOWN OF TRURO**  
**ZONING BOARD OF APPEALS**  
Meeting Minutes  
December 17, 2018 – 5:30 pm  
ZONING BOARD OF APPEALS MEETING



**Members Present (Quorum):** Bertram “Buddy” Perkel (Chair); Fred Todd (Vice Chair); Art Hultin (Clerk); John Thornley; John Dundas; Sue Areson (Alt.); Chris Lucy (Alt.)

**Members Absent:**

The meeting convened at 5:30 pm, Monday, December 17, 2018, by Chair Perkel.

**Public Hearing – Continued**

**2018-013/ZBA – Kenneth Shapiro**, represented by Attorney Ben Zehnder, for property located at 405 Shore Road, Truro, MA (Atlas Sheet 10, Parcel 5, Registry of Deeds title reference: Book 25631, Page 201). Applicant seeks a Special Permit with reference 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.

Chair Perkel invited Mr. Zehnder to present. Mr. Zehnder noted that at the last hearing Mr. Lucy and Vice Chair Todd were not voting. Mr. Zehnder said that the lot is non-compliant lot, yet it was a developed lot back in the 1920s or 1930s to the best of Mr. Zehnder’s knowledge. Mr. Zehnder interpreted the statute that if there was a structure was on the lot more than ten years, the project should be treated as a Special Permit.

After his last appearance, Mr. Zehnder recommended to the Applicant that he reduce the size of proposed of the structure 6’ in one direction and 2’ in another. The Applicant reduced the gross floor area from 2,400 square feet to 1,300 square feet and reduced the ridge height. In doing that, the Applicant had to remove the garage from the first floor but had to elevate the first floor above the flood plain requirements. The ridge height is 28.95’ and is conforming. The one item that is not correct on the Site Plan is that the garage is to be removed and Mr. Zehnder noted that it would be appropriate for the ZBA to make that a condition to grant the Special Permit or he can submit an updated set of plans. Mr. Zehnder added that the structure is conforming as to setback requirements and lot coverage requirements. Mr. Zehnder stated that the Applicant’s application had to be reviewed by the ZBA first as the Board of Health (BoH) and Conservation Commission (CC) wanted to be assured that the lot was determined to be buildable by the ZBA before the Applicant appeared in front of the BoH and CC for their approval.

Mr. Zehnder commented that it was hope that the ZBA consider this application favorably and that the project architect was also present to answer any questions.

Member and Mr. Zehnder discussed the following topics:

- Member Hultin commented that he was concerned about the original size of the project and the elevation data. He noted that he found the current plan was quite an improvement and more appropriate for the neighborhood.
- Member Areson reconfirmed the ridge height with Mr. Zehnder.
- Member Dundas had no questions.
- Member Thornley commented that the new proposal was also much improved.
- Vice Chair Todd commented that new structure was a more appropriate scale.

Member Areson asked Mr. Zehnder if the Abutters to the property had provided comments and he stated that he was not aware of any. Unidentified individuals present at the hearing requested copies of the plans which Mr. Zehnder immediately hand out copies for their review. Chair Perkel gave the public an opportunity to review the proposed plans.

Members set the following condition:

- Garage must be removed and not replaced.

Member Hultin asked if due to the age of structure if the Historical Commission had to review the application and Mr. Zehnder replied in the affirmative.

Chair Perkel recognized Annie Ditacchio, a neighbor, who was present and asked the Members if there was a minimum lot size requirement to build for Beach Point. Chair Perkel said that the lot was created prior to the enactment of the Bylaw. Ms. Ditacchio said that if that lot was a buildable lot, then she would consider doing the same to her property as precedence would be established. Chair Perkel noted, with chagrin, that the law does not recognize precedence in ZBA decisions but only to courts of record. Chair Perkel informed Ms. Ditacchio that he would provide time for her to review the elevations on the new plan during this evening's next hearing and give her the opportunity to comment afterwards. Ms. Ditacchio expressed frustration that even the proposed structure is smaller it would still adversely affect her view.

Ms. Ditacchio then requested that the letter of opposition (dated October 18, 2017) submitted by Ms. Marcia Brill, a neighbor at 420 Shore Road, be read aloud and entered into the record. Chair Perkel noted that the letter was in opposition to the size of the original plan and not the current one. Chair Perkel asked if there was anyone else from the public who wished to speak and there were none.

Chair Perkel then closed the public participation portion of the hearing and there was no additional discussion among Members on this matter.

**Member Hultin made a motion to grant a Special Permit in the matter of 2018-003/ZBA with the condition that the existing garage be removed and not replaced as per plans filed.**

**Member Areson seconded the motion.**

**So voted, 7-0, motion carries.**

Mr. Zehnder thanked the Members.

#### Public Hearing

TOWN OF TRURO  
  
 MAR 30 2022

RECEIVED  
 TOWN CLERK

**2018-014/ZBA – John R. Riemer** for property located at 7 Fisher Road, Truro, MA (Atlas Map 54, Parcel 26). Applicant seeks a Special Permit for approval under Section 50.1 of the Truro Zoning Bylaw concerning minimum sideyard setbacks for the construction of a garage.

Chair Perkel recognized Mr. Riemer and Chair Perkel added that he had a certified certification which may not be included in the Members' packets.

Mr. Riemer stated that he had submitted a detailed report, to include exhibits, which supported his application and would allow the Members to issue a Special Permit for this project. Mr. Riemer added that the Building Commissioner and he had a meeting where the Building Commissioner told him that this project could be granted a Special Permit to which Chair Perkel told Mr. Riemer that he could not speak on behalf of the Building Commissioner. Mr. Riemer then said that he had the support professionals in the building trade. Chair Perkel replied that if any of them were present at tonight's meeting he would give them the opportunity to speak. Mr. Riemer did not indicate that any of those building professionals were present and wanted to speak on his behalf.

Members and Mr. Riemer discussed the following topics:

- Member Hultin asked what provisions of the Bylaw allowed a Special Permit in this matter and opined that this required a Variance.
- Vice Chair Todd asked if this is a new building and not a modification.
- Member Areson asked about the siting of the garage and whether the Applicant could meet setback requirements.
- Chair Perkel asked under what provision of Section 50.1.C allows a Special Permit for a new garage.
- Vice Chair Todd opined that Section 50.1.C does not allow for a new structure.
- Member Dundas agreed with Vice Chair Todd.
- Member Lucy agreed with Vice Chair Todd.

Chair Perkel asked Mr. Riemer if he wished to proceed with his application and Mr. Riemer said that he had spoken with the Interim Town Planner Jessica Bardi who agreed with him that project could be granted a Special Permit. Mr. Riemer asked if he could read aloud his narrative and Chair Perkel replied that all the Members had read the narrative previously and it was not necessary for him to read his narrative aloud. Mr. Riemer noted that there would be no removal of existing trees to accommodate the new garage, but he would have to remove two trees to allow access to the garage. Based upon topography and shape of the lot, he was limited to the location of the garage. Chair Perkel noted that the garage is larger than the house and Mr. Riemer replied that according to the Assessor's property card that house has a net of 1,290 square feet and the proposed garage (including the first-floor garage and second floor storage) has an area of 1,056 square feet which is smaller than the existing house. Mr. Riemer also had two proposals for solar panel installation on the garage's roof.

At this point, Chair Perkel asked Mr. Riemer how he wanted to proceed. Chair Perkel said that Mr. Riemer could withdraw his application, or the Members could proceed to vote on his Special Permit application. Chair Perkel commented that he polled the Members and it appeared that two Members would be voting against the granting of the Special Permit. Mr. Riemer asked Chair Perkel if the Members felt that this matter qualified for a Variance and Chair Perkel replied that the Members do not

offer advisory opinions to Applicants. Chair Perkel noted that Mr. Riemer could obtain legal advice with a continuance, proceed this evening, or withdraw his application for Special Permit without prejudice.

Chair Perkel asked if there were members of the public in favor or against the proposed project. No one in favor of the application spoke.

Chair Perkel then recognized Attorney Robin Reid, of Provincetown, who represented Scott and Connie Mathers of 1 Fisher Road, Truro, MA. Her clients are the direct abutters to the Applicant's property and who would be most impacted by the intrusion of the setback. Ms. Reid opined that the Applicant is not properly before the Members under 50.1.C. Ms. Reid also opined that the Members should not approve the Special Permit as the setback requirement is for privacy and not in harmony with the public good. Ms. Reid also noted that the Applicant had previously appeared several years ago before the ZBA but withdrew his application. Ms. Reid respectfully requested that the Members deny the Special Permit.

Chair Perkel asked Mr. Riemer twice about a previous ZBA appearance several years ago. Mr. Riemer acknowledged a previous application for a 3-bay garage with a detached studio above it on a different location on the lot. Mr. Riemer noted that Member Hultin was a Member of the ZBA at that time. Mr. Riemer had withdrawn his previous application after opposition from the Mathers as well as by others as the project was too large.

Mr. Riemer said that he was shocked by the comments and objections provided by Ms. Reid. Mr. Riemer stated that he had a verbal handshake agreement with the Mathers that if Mr. Riemer supported an application for a project under consideration by the Mathers that they would do the same for him.

Chair Perkel then asked Mr. Riemer what he would like to do, and Mr. Riemer requested to withdraw his application for a Special Permit without prejudice.

**Chair Perkel made a motion to accept a withdrawal of the Special Permit application without prejudice in this matter.**

**Member Hultin seconded the motion.**

**So voted, 7-0, motion carries.**

Chair Perkel announced the decision and Mr. Riemer departed the meeting.

#### **Approval of Minutes**

Chair Perkel initially wanted to review the September 24, 2018, and May 21, 2018, but then decided to review the minutes at the next meeting.

**Member Hultin made a motion to adjourn the meeting at 6:33 pm.**

**Chair Perkel seconded the motion.**

**So voted, 7-0, motion carries.**

Respectfully submitted,



Alexander O. Powers  
Board/Committee/Commission Support Staff

