



## TOWN OF TRURO

### ZONING BOARD OF APPEALS

Meeting Minutes

March 28, 2022 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING

TOWN OF TRURO  
*[Signature]*  
MAY 25 2022  
2:34 pm  
RECEIVED  
TOWN CLERK

**Members Present (Quorum):** Art Hultin (Chair); Chris Lucy (Vice Chair); Heidi Townsend; Darrell Shedd, Virginia Frazier (Alt.)

**Members Absent:** Fred Todd

**Other Participants:** Barbara Carboni – Town Planner/Land Use Counsel; Liz Sturdy – Planning Department Administrator; Select Board Liaison John Dundas; Regan McCarthy (Applicant); Kiernan Healy (BSC Group); Andrea Gulan (Applicant); Ben Zehnder (Attorney for Thomas and Kathleen Dennis); Thomas and Kathleen Dennis (Applicants); Select Board Member Sue Areson; Charles Morrison (Abutter to Andrea Gulan)

Remote meeting convened at 5:30 pm, Monday, March 28, 2022, by Town Planner/Land Use 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/Land Use Counsel Carboni also provided information as to how the public may call into the meeting or provide written comment. Members introduced themselves.

Before the Public Comment period, Chair Hultin announced that Member Todd was absent tonight as he is in hospice at his home and receiving care. Chair Hultin highlighted Member Todd's exemplary record of service to the Town of Truro and what an incredible person he is.

#### **Public Comment Period**

The Commonwealth's Open Meeting Law limits any discussion by Members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes. No comments were made.

Prior to the commencement of Public Hearing **2022-001/ZBA (SP, VAR) – Regan McCarthy**, Chair Hultin recused himself and turned over the hearing to Vice Chair Lucy.

#### **Public Hearings (Continued)**

**2022-001/ZBA (SP, VAR) – Regan McCarthy** for property located at 35A Higgins Hollow Road (Atlas Map 47, Parcel 2, Registry of Deeds title reference: Book 20807, Page 42, Plans #665-80 and 689-59). Applicant seeks a Special Permit or Variance under M.G.L. Ch. 40A §6 or § 10, and §30.8 and §50.1 of the Truro Zoning Bylaws concerning frontage in the Seashore District.

Vice Chair Lucy recognized Ms. McCarthy who said that she had retained new counsel today. Ms. McCarthy added that she was requesting a withdrawal of her application in this matter under the advisement of her newly retained counsel. Town Planner/Land Use Counsel Carboni advised the Members that they could either approve the requested withdrawal of Ms. McCarthy's application or continue the matter.

**Vice Chair Lucy made a motion to approve the request to withdraw the application without prejudice in this matter.**

**Member Shedd seconded the motion.**

**So voted, 4-0, motion carries.**

Vice Chair Lucy announced the approval of the withdrawal of Ms. McCarthy's application and Ms. McCarthy thanked the Members before departing the meeting.

Prior to the commencement of Public Hearing **2022-002/ZBA (VAR) – Andrea Gulan**, Vice Chair Lucy turned over the hearing to Chair Hultin.

Chair Hultin recognized Town Planner/Land Use Counsel Carboni who asked as a courtesy to bring forward **2022-003/ZBA (SP) – Thomas P., Jr. and Kathleen C. Dennis** ahead of **2022-002/ZBA (VAR) – Andrea Gulan** as the Applicants' attorney has advised her that they will request a continuance in this matter. Chair Hultin agreed to bring the matter forward and he announced that only 4 Members would vote on this matter as Vice Chair Lucy has recused himself from this matter. Since only 4 Members would vote, Chair Hultin noted that approval of this matter would require a unanimous 4-0 vote.

**2022-003/ZBA (SP) – Thomas P., Jr. and Kathleen C. Dennis**, Individually and as Trustees for property located at 127 South Pamet Road (Atlas Map 48, Parcel 12; Certificate of Title Number: 228604, Land Ct. Lot #IC, Plan #16182-E and Land Ct. Lot #ID, Plan #16182-F) and 133 South Pamet Road (Atlas Map 48, Parcel 8, Registry of Deeds title reference: Book 33550, Page 123). The Applicant seeks a Special Permit under M.G.L. Ch. 40A, §6 and §30.7(A) of the Truro Zoning Bylaws to relocate structures on non-conforming lot and under 30.3 .1.A.2 to exceed by right Seashore District total Gross Floor Area.

Chair Hultin recognized Attorney Zehnder who requested a continuance of this hearing to April 25, 2022. Attorney Zehnder said that he hoped that the Members would approve the continuance request.

Chair Hultin recognized Member Shedd who asked for assurances for the Board that no more work will progress on the project until this matter is discussed at the next meeting. Attorney Zehnder replied that he could not do that as the Building Inspector has issued a building permit and the Truro Conservation Commission has approved the move of the dwelling.

Chair Hultin asked Town Planner/Land Use Counsel Carboni concurred with Attorney Zehnder that the building permit has not been revoked and that the Applicant has the right to continue to work on the property.

Chair Hultin noted that the ZBA has the option to hear the case this evening as it does not have to continue this meeting. Town Planner/Land Use Counsel Carboni agreed with Chair Hultin that there are issues which need to be resolved. Member Shedd stated that this is a difficult situation and that he was prepared to discuss this matter tonight. Member Shedd commented that he was unsure if he was going to vote in favor of a continuance.

Chair Hultin asked Town Planner/Land Use Counsel Carboni if it was permissible to table this hearing for later this evening as it appeared that it would be a lengthy hearing and hear the matter of **2022-002/ZBA (VAR) – Andrea Gulan**. Town Planner/Land Use Counsel Carboni opined that it was permissible, but it did require a vote.

**Chair Hultin made a motion to table this matter for later this evening after the 2022-002/ZBA (VAR) – Andrea Gulan hearing.**

**Member Frazier seconded the motion.**

**So voted, 4-0, motion carries.**

Chair Hultin announced that Vice Chair Lucy returned and would vote on the matter of **2022-002/ZBA (VAR) – Andrea Gulan**.

**2022-002/ZBA (VAR) – Andrea Gulan** for property located at 2 Highview Lane (Atlas Map 40, Parcel 97, Registry of Deeds title reference: Book 10816, Page 158). Applicant seeks Variance under M.G.L. Ch. 40A §10 and §50.1 of the Truro Zoning Bylaw concerning a detached saltbox garage 23.26' from the side yard setback where 25' is required in the Residential District.

Chair Hultin recognized Ms. Gulan who stated that she was applying for a Variance as her project was 18" over the 25' setback. The reason why is she thought there was plenty of room for aesthetic reasons. Ms. Gulan asked for approval of her request and leniency. Chair Hultin asked for more information as to the sequence of events which resulted in this situation. Ms. Gulan provided information to include her selection of a modular home construction company in Pennsylvania as the building contractor.

Member Shedd noted that he had visited the property and that the Members should approve the request for the Variance. Vice Chair Lucy said that this error was not malicious but noted that abutters, Charles and Joanna Morrison, had raised concerns via email to the ZBA. Member Frazier said that she had driven by the property and had no objection. Member Townsend said that she agreed with her colleagues.

Chair Hultin asked if the abutters were attending this hearing, and when there was no reply, Chair Hultin who read their concerns aloud. Ms. Gulan noted that she was not surprised that the Morrison family had complained as she and the Morrison family have been arguing over the appearance and neglect of the Morrison property. Chair Hultin asked if anyone wanted to speak in favor, or opposition, in this matter and there were none.

Chair Hultin recognized Member Shedd who stated that he didn't want the garage to be used as a rental apartment and he would want that to be a condition of approval. Town Planner/Land Use Counsel Carboni opined that this condition could be included in the approval, but Chair Hultin noted that there was no plumbing in the garage. Ms. Gulan added that the addition of plumbing was never in the plan and that it would only be used for storage as any alteration would be too expensive.

**Vice Chair Lucy made a motion to approve the request for the Variance in this matter.**

**Member Shedd seconded the motion.**

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

Chair Hultin announced to Ms. Gulan that her request was approved, and she thanked the Members before departing the meeting.

Prior to the restart of the Public Hearing **2022-003/ZBA (SP) – Thomas P., Jr. and Kathleen C. Dennis**, Chair Hultin announced that Vice Chair Lucy was recused from this matter and a unanimous vote for approval was required with only four Members voting.

Chair Hultin announced the resumption of the Public Hearing **2022-003/ZBA (SP) – Thomas P., Jr. and Kathleen C. Dennis**. Attorney Zehnder stated that he wanted to continue the hearing as he was not comfortable with only four Members deciding. Chair Hultin stated that he was concerned that the Dennis family has made moves which had prejudiced the ZBA.

Chair Hultin recognized Mr. Dennis who said that this was a complicated matter and that there was no attempt to sidestep compliance. Mr. Dennis said that he and his wife wanted to be compliant and wanted to get “busy work” prior to the start of the summer season. Mr. Dennis also noted that the home will not be occupied until the family received permission from the ZBA. Attorney Zehnder noted that Mr. Dennis has permission from the Building Commissioner to move and not occupy the home. Attorney Zehnder concluded that the ZBA can’t force the Applicant to proceed with only four Members and Chair Hultin, as well as Town Planner/Land Use Counsel Carboni, agreed. Town Planner/Land Use Counsel Carboni noted that the Members may still proceed with the hearing and asked Attorney Zehnder to consider the Applicant agreeing not to progress with the project until the next hearing’s decision. Attorney Zehnder again reiterated that no ZBA in Truro had ever forced an Applicant to proceed with only four voting Members and he cautioned the Members not to proceed.

Chair Hultin asked Members for their input and Member Shedd expressed concern that the landscaping could be completed on the property before the ZBA decided on the Special Permit application as it would take time to seat five Members on the ZBA to decide on this matter. Member Frazier said that she agreed with Member Shedd. Member Townsend concurred with Member Shedd. Chair Hultin then stated that the comments made regarding this matter become part of the official record.

Chair Hultin asked Mr. Dennis what the Town can expect until the Special Permit application is decided upon. Mr. Dennis stated the house is sitting unoccupied on his neighbor’s property, so he said that he wanted to move the house to its final spot. Mr. Dennis noted that the Truro Conservation Commission permit will expire on May 15, 2022, so there is limited amount of time for any work to be completed. Town Planner/Land Use Counsel Carboni noted that the Applicant will appear again in front of the Conservation Commission and the Board of Health in early May 2022 as additional approval will be needed because of change to the permit that was already granted.

Attorney Zehnder said that the Applicant would assure the ZBA that the Applicant will not connect the building to a septic system or occupy it but only move the building to the pilings. Member Shedd asked Attorney Zehnder if the pilings would be the foundation for the building and Attorney Zehnder said the pilings would be as it would allow the building to be moved again dependent upon the conditions of the flood plain in the future. Chair Hultin commented that the Members should vote on a continuance until April 25, 2022, and a motion needed to be offered, and it would require 3 affirmative votes.

**Chair Hultin made a motion to continue this matter until April 25, 2022.**

**Member Townsend seconded the motion.**

**So voted, 4-0, motion carries.**

Chair Hultin announced the continuance of this matter until April 25, 2022, and Attorney Zehnder thanked the Members before departing the meeting.

### **Board Action/Review**

Chair Hultin noted that Vice Chair Lucy had rejoined the meeting and asked Select Board Member Areson to provide an update on the Work Session that had occurred among Truro committee chairs to discuss how to meet the Select Board goals. Select Board Member Areson said that the Select Board had not yet been briefed yet so Chair Hultin said this would be discussed at another date. Chair Hultin thanked Select Board Member Areson and asked her to let the Select Board know that a new ZBA Member may have to be appointed by the Select Board to fill a vacancy. Select Board Member Areson then left the meeting.

### **Approval of Minutes**

Town Planner/Land Use Counsel Carboni asked Chair Hultin to review, edit if necessary, and approve the minutes on tonight's agenda. Chair Hultin commented that he had read all the minutes on tonight's agenda and that he found no issues with any of them. Chair Hultin added that the Members would vote on each of them separately. Town Planner/Land Use Counsel Carboni stated that a "Rule of Necessity" was needed for the 2018 minutes as only Chair Hultin was present on the ZBA at the time. Town Planner/Land Use Counsel Carboni opined that she would like three Members to vote so there would be a majority vote. Member Townsend volunteered to the 3<sup>rd</sup> Member to vote in those cases and Chair Hultin agreed.

Members reviewed the minutes for January 22, 2018, and there were no corrections or edits.

**Chair Hultin made a motion to approve the minutes for January 22, 2018, as written.**  
**Vice Chair Lucy seconded the motion.**  
**So voted, 3-0, motion carries.**

Members reviewed the minutes for May 21, 2018, and there were no corrections or edits.

**Chair Hultin made a motion to approve the minutes for May 21, 2018, as written.**  
**Vice Chair Lucy seconded the motion.**  
**So voted, 3-0, motion carries.**

Members reviewed the minutes for July 23, 2018, and there were no corrections or edits.

**Chair Hultin made a motion to approve the minutes for July 23, 2018, as written.**  
**Vice Chair Lucy seconded the motion.**  
**So voted, 3-0, motion carries.**

Members reviewed the minutes for December 17, 2018, and there were no corrections or edits. Town Planner/Land Use Counsel Carboni suggested a correction as she was not the Interim Town Planner at the time and Chair Hultin agreed to the correction.

**Chair Hultin made a motion to approve the minutes for December 17, 2018, as amended by Town Planner/Land Use Counsel Carboni.**  
**Vice Chair Lucy seconded the motion.**  
**So voted, 3-0, motion carries.**

Members reviewed the minutes for January 24, 2022, and there were no corrections or edits.

**Vice Chair Lucy made a motion to approve the minutes for January 24, 2022, as written.**

**Member Shedd seconded the motion.**

**So voted, 4-0, motion carries.**

Town Planner/Land Use Counsel Carboni thanked the Members for approving the minutes.

**Vice Chair Lucy made a motion to adjourn at 6:54 pm.**

**Member Shedd seconded the motion.**

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

Due to a technical issue, following the adjournment vote and under the advisement of Town Planner/Land Use Counsel Carboni, Mr. Morrison was recognized by Chair Hultin. Chair Hultin stated that the public hearing was closed and the decision in the matter was rendered. Mr. Morrison thanked the Members for addressing his family's concerns specifically about the closeness of the project to the road. The meeting ended.

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff



RECEIVED  
TOWN CLERK