

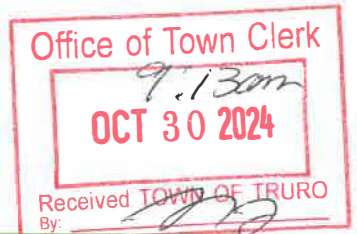


# Truro Planning Board Agenda

## Remote Zoom Meeting

Wednesday, November 6, 2024 – 5:00 pm

[www.truro-ma.gov](http://www.truro-ma.gov)



**Join the meeting from your computer, tablet or smartphone:**

**<https://us02web.zoom.us/j/84201455790>**

**Dial in: +1-646-931-3860**

**Meeting ID: 842 0145 5790**

**Passcode: 454825**

### **Open Meeting**

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web: Town of Truro website ([www.truro-ma.gov](http://www.truro-ma.gov)), "Helpful Links", "Truro TV Channel 8". Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/livestream.

Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/livestream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide comment via postal mail or by emailing Liz Sturdy, Planning Department Assistant, at [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov), one week prior to the meeting; or may instead speak during the Public Comment portion of the hearing.

### **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.

1. **Planner Report**
2. **Chair Report**
3. **Minutes** – None

### **Board Action/Review**

**2024-007/PB ANR – Thomas Nadeau** seeks approval of Form A – Application for Determination that Plan Does Not Require Approval (ANR) pursuant to G.L. c. 41, s. 81 and Section 2.2 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 102 Castle Road (Atlas Map 46, Parcel 361).

### **Board Discussion/Action**

- ◆ Updates on work for next year
  - Lot Clearing
  - Lot Coverage
  - Climate Change
- ◆ Street Inventory List

**Next Meeting:** Wednesday, November 20, 2024 at 5:00 pm

### **Adjourn**

## STAFF MEMORANDUM

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To: Truro Planning Board  
From: Barbara Carboni, Town Planner/Land Use Counsel  
Date: November 5, 2024  
Re: November 6 2024 meeting

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**Thomas Nadeau**, application for ANR endorsement of Plan of Land dated October 1, 2024: 102 Castle Road (Map 46, Parcel 361).

### Proposed Division of Land

102 Castle Road contains 2.12 acres, with 350.6 feet of frontage on Castle Road, and 362.41 feet of frontage on Resolution Road. A plan of land has been submitted with a request for endorsement as Approval Not Required (ANR), pursuant to G.L. c. 41, s. 81P. The plan divides the parcel into two lots: Lot 1B, having 339.84 feet of frontage on Resolution Road (conforming, where Zoning Bylaw requires 150 feet); and Lot 1A, containing 46,243 square feet and having 362.41 feet of frontage on Castle Road (conforming). Lot 1A also has 114.24 feet of frontage on Resolution Road (nonconforming).

The Form A submitted proposes that the division of land is not a subdivision because every lot has sufficient frontage on 1) a public way or way used as a public way, namely "Castle Rd or Resolution Rd"; and 2) on a way shown on an approved plan, namely "Resolution Rd" and subject to "Deeded access to Resolution Road."

A notation on the plan indicates that a dwelling is under construction on Lot 1B (confirmed by Building Commissioner).

### Castle Road and Resolution Road

Castle Road is a public way according to the Town's Street Inventory. [https://www.truro-ma.gov/sites/g/files/vyhlf9766/f/file/file/steet\\_inventory\\_04.24.2015.pdf](https://www.truro-ma.gov/sites/g/files/vyhlf9766/f/file/file/steet_inventory_04.24.2015.pdf)

Resolution Road is a private way appearing on the Cathedral Hill subdivision plan approved in 1966 (Plan Book 212, Plan 45), although the 102 Castle parcel was not created in that subdivision. 102 Castle was created by an ANR plan endorsed in 1992 (Plan Book 500, Plan 26), being Lot 1 on that plan.

### ANR Endorsement

An application for ANR endorsement proposes that the division of land shown in a plan is not a subdivision as defined under the Subdivision Control Law, and therefore does not require the Planning Board's approval. The definition of "subdivision" in G.L. c. 41, s. 81L states that a division of land is not a subdivision if:

"every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon. . . ."

Lot 1B has conforming frontage (339.84 feet) on Resolution Road, a private way shown on the approved 1966 Cathedral Hill subdivision plan.

Lot 1A has 362.41 feet of frontage on Castle Road, technically compliant with the Zoning Bylaw requirement of 150 feet. Technical compliance with the frontage requirement, however, does not automatically entitle an ANR plan to endorsement. A body of case law has established that the frontage proposed must provide access that is real in a practical sense and *in fact* provides for safe vehicular travel. See *Gates v. Planning Board of Dighton*, 48 Mass.App.Ct. 394 (2000) and cases cited within. The Planning Board does not have unlimited discretion in determining whether access is adequate, and cannot deny ANR endorsement because it believes that vehicular access "could be better provided for." *Gates*, 48 Mass.App. Ct. at 397. As the case law has shaken out, if the access on a public way is "illusory," ANR endorsement may be denied; if it "could be better but [is] manageable," endorsement is warranted. *Gates*, 48 Mass.App.Ct. at 397.

The cases are very fact-specific, but as a whole they establish that "illusory" access is a small category. A paper (unbuilt) street was found not to provide access "real in the physical sense" (*Perry v. Planning Board of Nantucket*, 15 Mass.App.Ct 144 (1983); frontage on I-95, a limited access highway, did not warrant ANR endorsement, because "as a practical matter, there was no access through that frontage at all" (*Hrenchuck v. Planning Board of Walpole*, 8 Mass.App.Ct. 949 (1979); a guardrail along a public way installed to keep vehicles from "pitching down a steep slope" meant that "practical access was barred until the DPW took down the guardrail which it would not do unless the owner filled in the grade that produced the dangerous slope." *Poulos v. Planning Board of Braintree*, 413 Mass. 359 (1992)(ANR endorsement permissibly denied "in the absence of *present* adequate access."). There are numerous cases in which access was deemed less than ideal, but not a prohibition to endorsement.

In this case, the Board must make a determination as to whether the frontage provided by Castle Road "could be better but is manageable" or "illusory." While topography is not indicated on the submitted plan, it is evident from inspection that the property slopes down from Castle Road. The fact that there is a guardrail along most (but not all) of the frontage on Castle Road is not dispositive, but is one condition that the Board may consider.

The availability of alternate access to Lot 1A (from Resolution Road) does not change the Board's analysis. The frontage on Resolution Road is nonconforming, at 114.24 feet. Access to the property must be provided by the frontage claimed to meet the Bylaw minimum - in this case, it must be provided by Castle Road. Accessible but nonconforming frontage does not satisfy the statutory requirement. See *Gates v. Planning Board of Dighton*, 48 Mass.App.Ct. at 482

(alternate access points were from frontage having less than bylaw 175-foot minimum; ANR endorsement properly denied where frontage *meeting* bylaw minimum did not provide safe and efficient access).



# Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

## FORM A

### APPLICATION FOR DETERMINATION THAT PLAN DOES NOT REQUIRE APPROVAL (ANR)

To the Planning Board of the Town of Truro, MA

Date 10/7/2024

The undersigned owners of all the land described herein submitted the accompanying plan entitled: DIVISION PLAN OF LAND IN TRURO MA and dated OCT 1 2024, requests a determination and endorsement by said Board that approval by it under the Subdivision Control Law is not required.

Property Location: 102 CASTLE RD Map(s) and Parcel(s): MAP 46 PARCEL

Number of Lots Created: 2 Total Land Area: 92,181 S.F [ 361

The owner's title to said land is derived under deed from JOSEPH C. DUNN dated MAY 3 2024, and recorded in the Barnstable Registry of Deeds Book and Page 36345/102.  
Land Court Certificate of Title No. \_\_\_\_\_ registered in Barnstable County.

The undersigned believes that such approval is not required for the following reasons: (check as appropriate)

- ☐ The accompanying plan is not a subdivision because the plan does not show a division of land.
- ☒ The division of the tract of land shown on the accompanying plan is not a subdivision because every lot shown on the plan has frontage of at least such distance as is presently required by the Truro Zoning Bylaw under Section 50.1(A) which requires 150 feet for erection of a building on such lot; and every lot shown on the plan has such frontage on:
- ☒ a public way or way which the Town Clerk certifies is maintained and used as a public way, namely CASTLE RD, or
- ☒ a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, namely RESOLUTION RD on DEEDED ACCESS TO RESOLUTION RD and subject to the following conditions \_\_\_\_\_; or
- ☐ a private way in existence on December 8, 1955, the date when the subdivision control law became effective in the Town of Truro having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon, namely \_\_\_\_\_.
- ☐ The division of the tract of land shown on the accompanying plan is not a "subdivision" because it shows a proposed conveyance/other instrument, namely \_\_\_\_\_ which adds to/takes away from/changes the size and shape of, lots in such a manner that no lot affected is left without frontage as required by the Truro Zoning Bylaw under Section 50.1(A), which requires 150 feet.

- ☐ The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings, specifically \_\_\_\_\_ buildings were standing on the property prior to December 8, 1955, the date when the subdivision control law went into effect in the Town of Truro and one of such buildings remains standing on each of the lots/said buildings as shown and located on the accompanying plan. Evidence of the existence of such buildings prior to the effective date of the subdivision control law as follows:

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- ☐ Other reasons or comments: (See M.G. L., c.41, §81-L)

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All other information as required in the Rules and Regulations Governing Subdivisions of Land shall be submitted as part of the application.

THOMAS J. NADEAU

(Printed Name of Owner)

Thomas J. Nadeau

(Signature)

(Printed Name of Owner)

P.O. BOX 1135

(Signature)

12 PERRY RD TRURO 02666

(Address of Owner(s))

(Address of Owner(s))

(Printed Name of Agent)

(Signature)

(Address of Agent)

**File ten (10) copies each of this form and applicable plan(s) with the Town Clerk; and a complete copy, including all plans and attachments, submitted electronically to the Planning Department Assistant at [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov)**



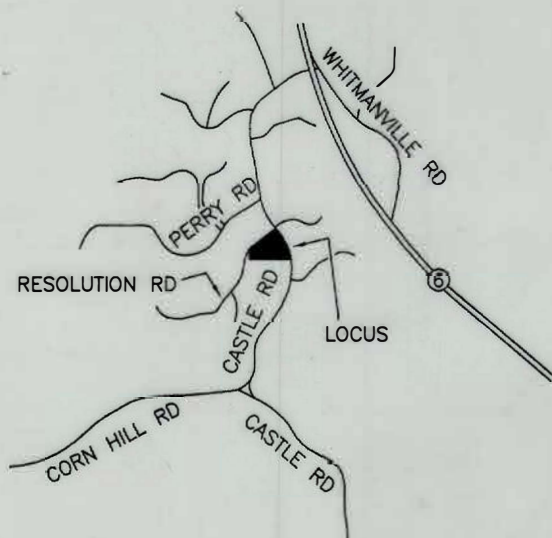
## 2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: <u>102 CASTLE RD</u>		Applicant Name: <u>THOMAS NADEAU</u>		Date: <u>10/23/24</u>
No.	Requirement	Included	Not Included	Explanation, if needed
<b><u>2.2.2 Submission Requirements</u></b>				
Any person may submit a plan seeking endorsement that the plan does not require approval under the Subdivision Control Law by providing the Board with the following:				
a.	A properly executed application for Approval Not Required Endorsement (Form A).	✓		
b.	Ten (10) paper prints of the plan. Said plan shall be prepared in such a manner as to meet the Registry of Deeds and/or Land Court requirements for recording and shall contain the following information:	✓		
b.1	The boundaries, area, frontage and dimensions of the lot or lots for which ANR endorsement is sought.	✓		
b.2	The date of the plan, scale, north arrow and assessor's map and parcel number of all land shown on the plan and directly abutting the land shown on the plan.	✓		
b.3	The name(s) of the owner(s) of record of the lots shown on the plan and of the applicant, together with the name, address seal and signature of the land surveyor who prepared the plan.	✓		
b.4	Relevant zoning classification data.	✓		
b.5	A locus plan containing sufficient information to locate the land and showing streets bounding or providing access to the property.	✓		
b.6	The name(s) of the way(s) on which the lots front, information as to ownership of the way(s) and the physical condition of the way(s) including actual width, surface type and condition.	✓		
b.7	The location and dimension of any natural features which might affect the use of the frontage for access.	✓		
b.8	The location, including setbacks to all lot lines, of all buildings and other structures on the proposed ANR lots shown on the plan.	✓		
b.9	The location of any wetland on the land shown on the plan or within one hundred (100) feet of its boundaries.	✓		
b.10	The location of all bounds and easements on the proposed ANR lots shown on the plan.	✓		

## 2.2 - APPROVAL NOT REQUIRED (ANR) PLAN ENDORSEMENT REVIEW CHECKLIST - Applicant

Address: <u>102 CASTLE RD.</u>		Applicant Name: <u>THOMAS NADEAU</u>		Date: <u>10/23/24</u>
No.	Requirement	Included	Not Included	Explanation, if needed
b.11	The statement "Approval under the Subdivision Control Law Not Required", and sufficient space for the date of the application submittal and the date of endorsement, docket number and the signatures of all Board members.	✓		
b.12	The statement "Planning Board endorsement of this plan indicates only that the plan is not a subdivision under MGL, Chapter 41, Section 81-L and does not indicate that a lot is buildable or that it meets Zoning, Health or General Bylaw requirements."	✓		





PCL. 389

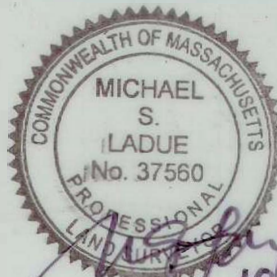
CAPTAIN WILLIAMS WAY

THIS PLAN AND THE ACCOMPANYING CERTIFICATIONS DO NOT CONSTITUTE A CERTIFICATION OF THE TITLE TO THE PROPERTY DISPLAYED HEREON. THE OWNERS OF LOCUS AND ABUTTING PROPERTIES ARE SHOWN ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.

PLANNING BOARD ENDORSEMENT OF THIS PLAN INDICATES ONLY THAT THE PLAN IS NOT A SUBDIVISION UNDER SECTION 81-L OF THE GENERAL LAWS AND DOES NOT INDICATE THAT A LOT IS BUILDABLE OR THAT IT MEETS ZONING, HEALTH, CONSERVATION OR GENERAL BY-LAW REQUIREMENTS.

I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN PREPARING THIS PLAN.

*Michael S. Ladue* p.l.s. 10/1/24  
REGISTERED LAND SURVEYOR DATE



FOR REGISTRY USE ONLY LOCUS - 1" = 2000'

APPROVAL NOT REQUIRED UNDER  
THE SUBDIVISION CONTROL LAW  
REF. CHAPTER 41, SECTION 81-P, G.L.

1 RESOLUTION ROAD  
N/F RITA BURKE  
ASSESSOR'S MAP 46 PARCEL 4  
DEED BOOK 3589 PAGE 261  
PLAN BOOK 367 PAGE 89 (LOT 2)

1 CAPT. WILLIAMS WAY  
N/F TAGGART NASH FAMILY TRUST  
JAMES P. NASH & ANN E. TAGGART, TRUSTEES  
ASSESSOR'S MAP 46 PARCEL 392  
L.C. CERT. 215460  
L.C. PLAN. 17658-H (LOT 23)

REFERENCE:  
DEED BOOK 7736 PAGE 319  
DEED BOOK 18980 PAGE 285

PLAN BOOK 500 PAGE 26  
PLAN BOOK 212 PAGE 45

ZONING: RESIDENTIAL

ASSESSORS:  
MAP 6-1 PARCEL 16

97 CASTLE ROAD  
N/F JONATHAN C. DECANTIS ET. AL  
ASSESSOR'S MAP 46 PARCEL 7  
PLAN BOOK 34626 PAGE 135

LEGEND  
C.B. - CONCRETE BOUND  
U.P. - UTILITY POLE

LOT 1A  
43,397 S.F.± UPLAND  
2,846 S.F.± WETLAND  
46,243 S.F.± TOTAL AREA

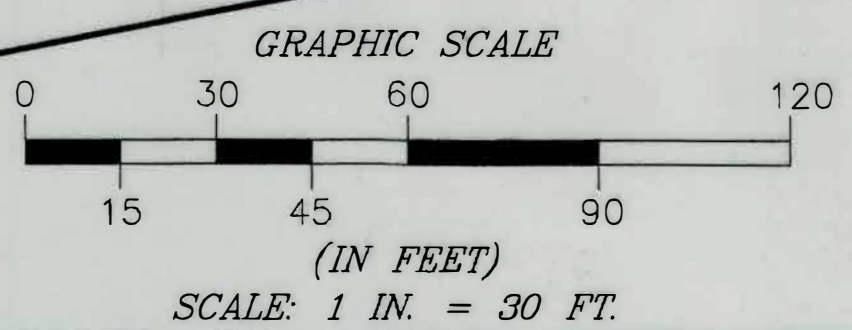
LOT 1B  
42,253 S.F.± UPLAND  
3,685 S.F.± WETLAND  
45,938 S.F.± TOTAL AREA

WETLAND

96 CASTLE ROAD  
N/F MEGAN HINTON  
ASSESSOR'S MAP 46 PARCEL 382  
DEED BOOK 34123 PAGE 305  
PLAN BOOK 500 PAGE 26 (LOT 2)

5 RESOLUTION ROAD  
N/F JOE F. PRYSE LIVING TRUST  
JOE PRYSE & BETH WORRELL, TRUSTEES  
ASSESSOR'S MAP 46 PARCEL 9  
DEED BOOK 33920 PAGE 341  
PLAN BOOK 459 PAGE 30 (LOT 23)

2 JEAN'S WAY  
N/F COBBLE HILL REALTY TRUST  
BRIAN R. HYDE, TRUSTEE  
ASSESSOR'S MAP 46 PARCEL 17  
DEED BOOK 7834 PAGE 121  
PLAN BOOK 212 PAGE 45 (LOT 1)



J.C. ELLIS DESIGN CO., INC.  
P.O. BOX 81  
NORTH EASTHAM, MA 02651  
LADUE LAND SURVEYING  
MICHAEL LADUE, P.L.S.

DIVISION PLAN OF LAND IN  
TRURO, MA  
MADE FOR  
THOMAS NADEAU

OCTOBER 1, 2024  
SCALE: 1" = 30'