



# Truro Zoning Board of Appeals Agenda

## Remote Zoom Meeting

Monday, January 27, 2025 – 5:30 pm

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

Join the meeting from your computer, tablet or smartphone:

<https://us02web.zoom.us/j/84896366145>

Dial in: +1-646-931-3860

Meeting ID: 848 9636 6145

Passcode: 945316

### Open Meeting

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web on the "Truro TV Channel 8" button under "Helpful Links" on the homepage of the Town of Truro website ([www.truro-ma.gov](http://www.truro-ma.gov)). 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.

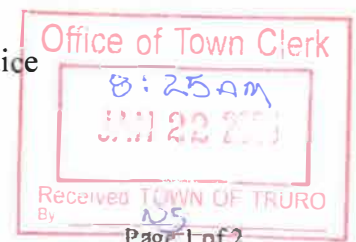
### Minutes

- ◆ August 19, 2024
- ◆ September 23, 2024
- ◆ October 21, 2024

### Public Hearing – Continued

**2024-011/ZBA – Janet Despres and Richard Despres**, for property located at 4 Kettle Hole Lane (Atlas Map 42, Parcel 266) located on property in the Residential District. Applicant seeks: (1) a variance to construct a garage within a side setback (10 feet where 25 feet required); and (2) a Special Permit for the removal of a pre-existing, non-conforming structure (shed) with new non-conforming garage structure. EXTENSION OF TIME TO JANUARY 27, 2025 MEETING; DEADLINE FOR BOARD ACTION – THIS MEETING

- ◆ Variance and Special Permit – Request for Withdrawal Without Prejudice



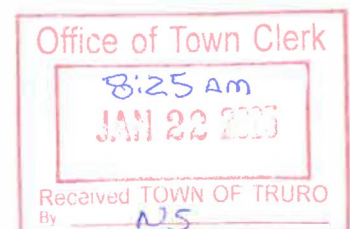
**2024-013/ZBA – Peter and Melissa Costa**, relating to property located at 113 Castle Road (Atlas Map 46, Parcel 398). Appeal by applicants of inability to obtain zoning enforcement from the Building Commissioner with respect to zoning violations alleged to arise from construction of a dwelling on property in the Residential District. DEADLINE FOR BOARD ACTION – THIS MEETING; DEADLINE FOR FILING DECISION: FEBRUARY 10, 2025

- ♦ New materials

**Zoning Task Force Update** – Darrell Shedd

**Next Meeting**      Monday, February 24, 2025 at 5:30 p.m.

**Adjourn**





## TOWN OF TRURO

### ZONING BOARD OF APPEALS

Meeting Minutes

August 19, 2024 – 5:30 pm

### REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker (Clerk); Art Hultin, Russ Braun

**Members Absent:**

**Other Participants:** Barbara Carboni-Town Planner and Land Use Counsel; Ross Zachs (Owner and Applicant – 590 Shore Road); Mike Miller (Owner and Applicant – 590 Shore Road); David S. Reid (Attorney for Christine M. Murphy – Applicant and Owner of 7 Bay View Road); Christine M. Murphy (Applicant and Owner of 7 Bay View Road); Attorney Bill Henchy (Attorney for Same Lessin – Owner of 9 Bay View Road); Sam Lessin (Owner of 9 Bay View Road); Steven J. Garvan (Applicant and Owner of 274 Route 6); Caren L. Garvan (Applicant and Owner of 274 Route 6); Mike Czyoski (Truro Resident); Garrett Sharpless (Truro Resident and Abutter to 9 Bay View Road)

Remote meeting convened at 5:30 pm, Monday, August 19, 2024, by Chair Lucy. Town Planner and Land Use Counsel Carboni announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded.

*Note: Prior to the Public Comment Period, Mr. Garvan said that he was outside the Town Hall as he wanted to participate at tonight's meeting in person but no one was there and he was informed by Chair Lucy that ZBA meetings were remote and not in-person. Mr. Garvan stated that he would return home and join the meeting remotely.*

**Public Comment Period**

Chair Lucy invited any individual who wished to comment and there were no public comments made.

**Minutes**

None

**Board Action/Review**

**2023-005/ZBA 590 Shore Road - Special Permit Extension Request**

Chair Lucy noted that construction had not yet begun and a Special Permit Extension Request had been requested. Members and Town Planner/Land Use Counsel Carboni discussed whether to extend the Special Permit for 1 or 2 years.

**Vice Chair Shedd made a motion to grant a Special Permit extension for two years from this date expiring on August 19, 2026.**

**Member Hultin seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Member Braun - Aye**

**Chair Lucy - Aye**

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

After the vote, Town Planner/Land Use Counsel Carboni announced that she would send the Building Department a memorandum to notify the department of the ZBA's Special Permit extension.

#### **Public Hearing – New**

**2024-007/ZBA - Lodi-Gruber Family Trust**, for property located at 2 Meetinghouse Road (Atlas Map 50, Parcel 4, Unit 5) in the Residential District. Applicant seeks to amend the Special Permit Decision of December 10, 2009. (**Withdrawn**)

Chair Lucy read announced the public notice for this matter and announced that the application had been withdrawn and Town Planner/Land Use Counsel Carboni opined that since the matter had been advertised the public hearing should be opened. Once the hearing was opened, Town Planner/Land Use Counsel Carboni stated that there was no further action required by the Members as the application had been withdrawn. There were no other comments from the Members or from members of the public. Town Planner/Land Use Counsel Carboni asked that the Members take a roll call vote to close the matter and the vote was as follows:

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Member Braun - Aye**

**Chair Lucy - Aye**

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

**2024-006/ZBA-Christine M. Murphy**, for property located at 9 Bay View Road (Atlas Map 39, Parcel 21). Christine M. Murphy appeals building permits issued by the Building Commissioner on June 10, 2024 for a project located at 9 Bay View Road in the Residential District.

Chair Lucy read aloud the public notice for this matter and recognized Attorney Reid who stated the reasons and background for the Applicant's appeals of building permits which were issued by the Building Commissioner. Attorney Reid noted that he had contacted the Building Commissioner expressing concerns that these pending applications were being applied for without appearing in front of the ZBA, and furthermore, several logistic issues to include the proposed project, when completed, would result in the construction being less than 4' from the Applicant's property. Of the three proposed

cottages, the cottages would be 2.3', 3.8' and 3.5' from the Applicant's property. Attorney Reid also noted that one of the rear deck's may also be over the Applicant's property line.

Attorney Reid further stated that when Building Commissioner Rich Stevens received Attorney Reid's letter that Building Commissioner Stevens forwarded the letter to the Applicant (Mr. Lessin) and several Town departments but did not respond to Attorney Reid. Mr. Lessin's architect contacted Attorney Reid had a cordial discussion but not very productive according to Attorney Reid. Later, Attorney Reid learned that on June 10, 2024, the building permits were issued without a response to Attorney Reid's letter of concern regarding the proposed project and whether or not this was appropriate without the Applicant first going through the Planning Board and the ZBA. The construction of one of the cottages began around June 28, 2024. Attorney Reid then filed an appeal of the building permits issued in the hope to resolve the issue with the Applicant or address the ZBA to determine if it was appropriate for the building permits to be issued in the first place.

Attorney Reid also noted that since his client's application has been pending, construction had continued on at least two of the three cottages. Attorney Reid said that the Building Commissioner had issued building permits for alterations to a single-family homes on the property and it was Attorney Reid's position that these are not independent single-family homes but rather they are a one three-unit cottage colony. Attorney Reid requested that the ZBA revoke the building permits as the Applicant appeared to circumvent the application process for building permits by not going through the Planning Board and the ZBA and that these alterations are not maintenance related but are major construction events.

Chair Lucy recognized Attorney Henchy who represented the Lessin family. Attorney Henchy provided background information related to 7 Bay View Road as well as the process for the issuance of the building permits. Attorney Henchy noted that the present proposal is simply to rebuild the existing structures on the same footprint without increasing a single nonconformity.

Attorney Henchy addressed the issue of a rear deck that crossed over Ms. Murphy's property line and refuted that allegation by Attorney Reid. Attorney Henchy reviewed the existing and proposed floor plans for the cottages and highlighted the scope of work for all of the three cottages which was contained in the schematics and plans for the application for the building permits: replace windows and doors in kind, replace exterior siding, replace interior wall surfaces, replace plumbing fixtures, and replace electrical fixtures. Attorney Henchy reiterated that the same scope of work applied to each of the three cottages and noted that the Building Commissioner had determined that these properties were a single-family residence and issued a Special Permit with an exception under Bylaw §30.7(b). Attorney Henchy noted that there was history that the properties had been used as a cottage colony but that had not occurred since 2020 when Ms. Murphy acquired the properties. As to the building permits for the structures, Attorney Henchy said that the Building Commissioner was correct in his determinations and issuing the building permits.

The Members, Town Planner/Land Use Counsel Carboni, Attorney Reid, and Attorney Henchy commented on or discussed the following highlighted topics: the use of the 9 Bay View Road since 2020 and anticipated family use upon completion of the project; the plan is to use the cottages for family use but if it is determined by the Building Commissioner that these cottages cannot be used as single family use without a prior Special Permit for cottage colony conversion then Ms. Murphy will have to continue to use the properties as a cottage colony and wait three years before appearing in front of the ZBA for a Special Permit; the opinions of the Members regarding the Building Commissioner issuing the building

permits and unanimously the Members and Town Planner/Land Use Counsel Carboni expressed support for the Building Commissioner's decision to issue the building permits; the Bylaw would not require Ms. Murphy to run the properties as a cottage colony for three more years; the issue of abandonment could be resolved at a later time and could result in a condition for the issuance of the Certificate of Occupancy (CO); and the ZBA agree on findings so when the draft decision is written there are factual findings as a basis for the decision.

Chair Roberts invited members of the public to speak (whether pro or con) on this matter and Chair Roberts recognized the following individuals: Mr. Czyoski and Mr. Sharpless.

A brief discussion then ensued among the Members, Attorney Reid, and Attorney Henchy. Afterwards, Chair Lucy asked if a Member was prepared to make a motion with findings as per Town Planner/Land Use Counsel Carboni's request.

Town Planner/Land Use Counsel Carboni then made the following recommended findings for the Members to consider:

1. The Building Commissioner properly treated the structures as single-family dwellings.
2. The work does not increase the existing nonconformities.
3. No Special Permit is required under §30.7.
4. No Commercial Site Plan Review is required under §70.3.

Town Planner/Land Use Counsel Carboni also made the following proposed condition:

- No Certificate of Occupancy (CO) is issued until a determination is made by the Building Commissioner regarding the applicability of §40.3.

The Members then discussed the recommended findings and the proposed condition with Town Planner/Land Use Counsel Carboni. Attorney Henchy noted that he would ensure that the issue of colony conversion would be addressed by the Building Commissioner prior to the issuance of a CO and Town Planner/Land Use Counsel Carboni stated that this was reasonable and that she would have proposed the same. Attorney Henchy stated that he would prepare an email ensuring what he had just stated to Town Planner/Land Use Counsel Carboni and the Planning Department.

Town Planner/Land Use Counsel Carboni then reviewed the proposed findings which she proposed and the Members edited and agreed as follows:

1. The Building Commissioner properly treated the applications as pertaining to single-family dwellings.
2. The work constitutes repairs and does not increase the footprint of any buildings.
3. The work entailed does not increase any existing nonconformities.
4. No Special Permit is required under §30.7 of the Bylaw.
5. Commercial Site Plan Review is not required under §70.3.A. because the work pertains to single-family structures even if project would be exempt from Commercial Site Plan Review under §70.3.B.

**Vice Chair Shedd made a motion in the matter of 2024-006/ZBA-Christine M. Murphy – 9 Bay View Road that the ZBA upholds the building permits issued by the Building Commissioner subject as to the**

**findings as listed: 1. The Building Commissioner properly treated the applications as pertaining to single-family dwellings. 2. The work constitutes repairs and does not increase the footprint of any buildings. 3. The work entailed does not increase any existing nonconformities. 4. No Special Permit is required under §30.7 of the Bylaw. 5. Commercial Site Plan Review not applicable under §70.3.A. because the work pertains to single-family structures. Even if §70.3 were applicable, the project would be exempt from Commercial Site Plan Review under §70.3.B.**

**Member Braun amended the motion to include the building permit numbers: Cottage C is Building Permit 24-247, Cottage A is Building Permit 24-245, and Cottage B is Building Permit 24-246.**

**Vice Chair Shedd accepted the amendment.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Member Braun – Aye**

**Vice Chair Shedd – Aye**

**Member Crocker - Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

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

After the vote, Attorney Henchy stated that he had just sent his email as discussed to Town Planner/Land Use Counsel Carboni and Planning Department Assistant Liz Sturdy.

**2024-008/ZBA- Steven J. Garvan and Caren L. Garvan**, for property located at 274 Route 6 (Atlas Map 46, Parcel 386) in the Residential District. Applicant seeks to modify condition of special permit dated March 28, 2011 relating to in-law apartment.

Chair Lucy read aloud the public notice for this matter and asked if a representative for the Applicant was present and there was no reply. Chair Lucy and Town Planner/Land Use Counsel Carboni both noted that Mr. Garvan was present online but was not audible. Town Planner/Land Use Counsel Carboni noted that this was a public meeting and Chair Lucy should open the meeting. Chair Lucy confirmed that he had done so having read aloud the public notice. Town Planner/Land Use Counsel Carboni also noted that if Mr. Garvan could not be audible, the Members could continue the hearing until the next meeting. Mr. Garvan then joined the hearing by phone.

Chair Lucy recognized Mr. Garvan who provided background information regarding this matter and the purpose of the modification to the condition of the Special Permit in 2011. Mr. Garvan read aloud a letter, dated August 19, 2024, from the current renter of the in-law apartment to the Members. The renter has rented the apartment for the last seven years. The letter was signed by Ronald Gutman.

Mr. Garvan expressed previous frustration with Town staff as he felt that he was not receiving correct information and noted that one contact was no longer employed by the Town. Mr. Garvan noted Planning Department Assistant Liz Sturdy's spectacular assistance. Chair Lucy noted that the matter in 2011 was heard prior to the passing of the ADU Bylaw and he noted that he would be supportive of this application should the condition apply to the current ADU Bylaw's requirements. Mr. Garvan responded that the previous approval was granted properly. Member Braun noted that the use of the in-law apartment for the last seven years was not being used as intended for a family member and that there was a process to remove the condition. Member Braun also stated that the Applicant would have to request a building permit requesting a change of use to an ADU.

Town Planner/Land Use Counsel Carboni noted that what happens on the property fell under the purview and authority of the ZBA and not any Town staff. Town Planner/Land Use Counsel Carboni also noted that what the Applicant does is consistent with all other property owners who would like to have an apartment on their property. These owners must still comply with either the ADU Bylaw or the new Duplex Bylaw. Town Planner/Land Use Counsel Carboni added that there was an aspect of equity and what is now being expected of the Applicant would be no different for anyone else. Chair Lucy noted that he had a similar issue previously regarding an apartment over his garage.

Chair Lucy told Mr. Garvan that this issue was “by right” so there would be no appearance in front of the Planning Board but he would likely have to appear in front of the Board of Health for septic requirements and then the ZBA for final approval. Town Planner/Land Use Counsel Carboni read aloud an email in the record from Health and Conservation Agent Emily Beebe who commented that an additional septic tank would be required for the apartment.

Town Planner/Land Use Counsel Carboni noted that the ZBA could vote on this matter this evening or allow the Applicant to withdraw the application without prejudice and refile at a later date.

The Members commented or discussed the following highlighted topics: should the structure not be ADU Bylaw compliant, it would be reasonable for the Applicant to return to the ZBA and request that a modification of the condition occur; the Applicant withdraw the application without prejudice and then meet with the Building Commissioner to apply for a building permit requesting a change of use which would start a new process for approval; and Member Crocker noted that he and the applicant were classmates at the Massachusetts Maritime Academy, graduating in 1978, but had no contact so there was no conflict of interest.

Mr. Garvan then requested a withdrawal of the application without prejudice.

**Chair Lucy made a motion to accept the Applicant’s request to withdraw the application without prejudice in the matter of 2024-008/ZBA- Steven J. Garvan and Caren L. Garvan.**

**Vice Chair Shedd seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Member Braun - Aye**

**Chair Lucy - Aye**

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

**Chair Lucy made a motion to close the hearing regarding the matter of 2024-008/ZBA- Steven J. Garvan and Caren L. Garvan.**

**Vice Chair Shedd seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Braun - Aye**

**Member Hultin – Aye**

**Vice Chair Shedd - Aye**

**Chair Lucy - Aye**

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



### **Board Discussion**

Hybrid Meetings: Chair Lucy led the discussion on hybrid meetings with the Members and Town Planner/Land Use Counsel Carboni. Town Planner/Land Use Counsel Carboni noted that the Commonwealth of Massachusetts was operating under the rules which were implemented during the pandemic and that the state would continue this practice until March 2025. The order suspended the requirement of a quorum or the chair present and Town Planner/Land Use Counsel Carboni was unsure if this would be extended. Members were not strongly in favor of hybrid or in-person meetings.

Vice Chair Shedd requested that this agenda item to be added for further discussion on the agenda for the September 23, 2024 meeting and there were no objections.

### **Next Meeting**

Chair Lucy announced that the next meeting would be held on Monday, September 23, 2024 at 5:30 pm.

**Vice Chair Shedd made a motion to adjourn at 7:31 pm.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Braun – Aye**

**Vice Chair Shedd - Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

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

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff



# TOWN OF TRURO

## ZONING BOARD OF APPEALS

Meeting Minutes

September 23, 2024 – 5:30 pm

### REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker (Clerk); Art Hultin, Russ Braun

**Members Absent:**

**Other Participants:** Barbara Carboni-Town Planner and Land Use Counsel; Jill M. Shafer (Attorney for Lodi-Gruber Family Trust – Applicant); Elizabeth Gruber (Trustee of the Lodi-Gruber Family Trust)

Remote meeting convened at 5:30 pm, Monday, September 23, 2024, by Chair Lucy. Town Planner and Land Use Counsel Carboni announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded.

**Public Comment Period**

Chair Lucy invited any individual who wished to comment and there were no public comments made.

**Minutes**

None

**Public Hearing – New**

**2024-009/ZBA- Lodi-Gruber Family Trust**, for property located at 2 Meetinghouse Road (Atlas Map 50, Parcel 4, Unit 5) in the Residential District. Applicant seeks to amend the Special Permit Decision of December 10, 2009.

Chair Lucy read aloud the public notice and recognized Attorney Shafer who confirmed receipt of an email today from Health and Conservation Agent Emily Beebe regarding this application. Attorney Shafer noted that it would be prudent to request a continuance in this matter so she may delve into the issue in an attempt to resolve the issue with the Board of Health within the next month. Attorney Shafer requested a continuance for a month.

Town Planner/Land Use Counsel Carboni stated that the next meeting would be October 21, 2024 so the continuance would be set for a date certain.

**Vice Chair Shedd made a motion to continue the matter of 2024-009/ZBA- Lodi-Gruber Family Trust to October 21, 2024.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Vice Chair Shedd – Aye**

**Member Crocker – Aye**

**Member Hultin – Aye**

**Member Braun - Aye**

**Chair Lucy - Aye**

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

#### **Discussion and Vote on Proposed 2025 Zoning Board of Appeals Meeting Schedule**

Chair Lucy said that he had no issues with the proposed 2025 ZBA Meeting Schedule and led the discussion on this agenda item with the Members. Member Crocker announced that he would not be available for the meeting scheduled for December 29, 2025. Vice Chair Shedd commented on the supplemental filing dates and asked Chair Lucy if the supplemental filing dates would be the Monday one week prior to the ZBA meeting. Chair Lucy replied that this would be discussed this evening during the Board Discussion on the Rules & Regulations of the ZBA.

**Vice Chair Shedd made a motion to accept the proposed 2025 Zoning Board of Appeals Meeting Schedule as presented.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Chair Lucy - Aye**

**Vice Chair Shedd – Aye**

**Member Crocker – Aye**

**Member Braun - Aye**

**Member Hultin – Aye**

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

#### **Board Discussion**

Rules & Regulations of the ZBA: Chair Lucy led the discussion on the Rules & Regulations of the ZBA with the Members. Chair Lucy noted the lateness of supplemental filings by Applicants in less than 7 days prior to a ZBA meeting up to and including the day of the ZBA meeting. Town Planner/Land Use Counsel Carboni added that the statute (M.G.L. Chapter 40A, §12) and the Zoning Bylaw say that the ZBA should have Rules & Regulations about its procedures and this action would be consistent with the statute and the Zoning Bylaw.

Chair Lucy noted that a final decision on the Rules & Regulations would not be rendered this evening but it would be discussed. Town Planner/Land Use Counsel Carboni noted that the proposed Rules & Regulations could be changed at any time by the Members and did not require approval at Town Meeting.

Town Planner/Land Use Counsel Carboni led the review of the draft ZBA Rules & Regulations and highlighted the following: II. Membership, IV. Election of Officers, VI. Meetings of the Board – Time and Place, VII. Meetings of the Board – Quantum of Vote; Quorum and Attendance, IX. Applications to the

Board, XI. Hearings, Board Action/Review (chart, at start of meeting, before start of hearing, inform the Applicant if only four (4) voting Members are present and options, and the creation of findings of facts), XII. Continued Hearings, XIII. Decisions of the Board (the grant of a Special Permit or approval of a Variance requires a vote in favor by at least four (4) Members or Alternates (4 Aye votes minimum), notice that the decision has been issued the Applicant/Applicant's Representative/Applicant's Attorney and all abutter stating outcome of the hearing, and the appeals process and deadline to file as per the statute), XV. Annual Report, and XVI. Hiring of Outside Consultants.

Town Planner/Land Use Counsel Carboni noted that the draft included regular Rules & Regulations for the Members to consider this evening as well as Comprehensive Permit Regulations which the Members can consider on another evening. Town Planner/Land Use Counsel Carboni also acknowledged that the majority of the work to create the draft ZBA Rules & Regulations was prepared by Planning Department Assistant Liz Sturdy and that she deserved the credit for this body of work.

Town Planner/Land Use Counsel Carboni confirmed that the Members can determine a date on which the ZBA Rules & Regulations become effective.

The Members and Town Planner/Land Use Counsel commented on or discussed the following topics: the definition of "safe harbor"; inclusion of public comment submissions for the hearing (in-person or via email); late public comment submissions or Applicant submissions would be included in the record but the Members could not consider it if not submitted in a timely fashion or the ZBA chair (at the chair's or at the Members' discretion) could postpone the hearing for an additional week so the Members may review the newly submitted information; has there been a case where an Applicant comes and one of the sitting Members is not present to vote and the Applicant is reluctant to move forward if an alternate Member votes; and unless there is a conflict of interest, the Applicant can not object to a voting Member.

*Note: Town Planner/Land Use Counsel Carboni departed the meeting at 5:59 pm. Prior to her departure, Town Planner/Land Use Counsel Carboni asked the Members to provide their feedback on the draft ZBA Rules & Regulations directly to her only prior to the next meeting in accordance with Open Meeting Law. There were no objections.*

Chair Lucy and the Members briefly discussed the intent of the Rules & Regulations was to eliminate submissions on the date of the meeting. The Members also discussed whether or not the Members would have to agree to be polled by an Applicant or the Applicant's representative. The consensus was that Member's could decide individually if the Member wanted to participate in a poll requested by an Applicant or the Applicant's representative.

Hybrid Meetings: Chair Lucy led a brief discussion on hybrid meetings with the Members agreeing to further discuss at its next meeting. There were no objections.

### **Next Meeting**

Chair Lucy announced that the next meeting would be held on Monday, October 21, 2024 at 5:30 pm.

**Vice Chair Shedd made a motion to adjourn at 6:08 pm.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Vice Chair Shedd - Aye**  
**Member Crocker – Aye**  
**Member Hultin – Aye**  
**Member Braun – Aye**  
**Chair Lucy - Aye**  
**So voted, 5-0-0, motion carries.**

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Alexander O. Powers", with a stylized flourish at the end.

Alexander O. Powers  
Board/Committee/Commission Support Staff



## TOWN OF TRURO

### ZONING BOARD OF APPEALS

Meeting Minutes

October 21, 2024 – 5:30 pm

### REMOTE ZONING BOARD OF APPEALS MEETING

**Members Present (Quorum):** Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker (Clerk); Art Hultin, Russ Braun

**Members Absent:**

**Other Participants:** Leah Camhi (Truro Resident); Jill M. Shafer (Attorney for Lodi-Gruber Family Trust – Applicant); Elizabeth Gruber (Trustee of the Lodi-Gruber Family Trust); Suzanne Parish and Veronica Janssens (Owners and Applicants); Ben Zehnder (Attorney for Janet Despres and Richard Despres - Applicants); AJ Santos (Abutter to 4 Kettle Hole Lane)

Remote meeting convened at 5:30 pm, Monday, October 21, 2024, by Chair Lucy who also announced that this was a remote meeting which was being broadcast live on Truro TV Channel 8 and was being recorded.

**Public Comment Period**

Chair Lucy invited any individual who wished to comment and Chair Lucy recognized Ms. Camhi. There were no other public comments.

**Public Hearing – Continued**

**2024-009/ZBA- Lodi-Gruber Family Trust**, for property located at 2 Meetinghouse Road (Atlas Map 50, Parcel 4, Unit 5) in the Residential District. Applicant seeks to amend the Special Permit Decision of December 10, 2009.

Chair Lucy read aloud the public notice and recognized Attorney Shafer who requested a withdrawal of this application without prejudice. Attorney Shafer also requested that should the Applicant reapply within a year the ZBA would waive the filing fee. Chair Lucy responded that would be considered at the time of the Applicant reapplying within a year should it occur.

**Vice Chair Shedd made a motion to approve the withdrawal of the application in the matter of 2024-009/ZBA – Lodi-Gruber Family Trust without prejudice.**

**Member Crocker then asked if a bedroom that had been added to property had been removed and Chair Lucy responded that this would have to be confirmed by the Building Department.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Hultin – Aye**  
**Member Braun – Aye**  
**Vice Chair Shedd - Aye**  
**Chair Lucy - Aye**  
**So voted, 5-0-0, motion carries.**

After the vote, Member Hultin advised that it would be best to decide on the waiver of the filing fee if the Applicant reapplied within a year now rather than later. There were no objections.

**Member Hultin made a motion to waive the filing fee if the Applicant reapplied no later than October 21, 2025.**

**Vice Chair Shedd seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**  
**Member Hultin – Aye**  
**Member Braun – Aye**  
**Vice Chair Shedd - Aye**  
**Chair Lucy - Aye**  
**So voted, 5-0-0, motion carries.**

#### **Public Hearing - New**

**2024-010/ZBA - Suzanne Parish and Veronica Janssens**, for property located at 39 Fishermans Road (Atlas Map 42, Parcel 57). Applicant seeks a special permit to increase an existing nonconformity (expand deck further into rear setback) on property in the Residential District.

Chair Lucy read aloud the public notice and then he announced that he had done previous work for Ms. Janssens so he offered to stay on ZBA to hear this matter (unless there were any objections) and turn over the hearing to Vice Chair Shedd. There were no objections to Chair Lucy voting on this matter.

Vice Chair Shedd recognized Ms. Parish and Ms. Janssens who provided background information regarding their application. After their presentation, Vice Chair Shedd noted that a variance in this case was not necessary and asked the Applicants if they wished to withdraw their application for a Variance and then move forward with their application for a special permit. Member Braun said that he disagreed and that the Applicants would still need a variance as the increase in the nonconformity would trigger the need for a variance. Member Hultin noted that the public notice for this hearing did not reflect an application for a variance and Vice Chair Shedd said that the application reflected an application for a variance and special permit. This was confirmed by Chair Lucy who said that he had previously confirmed this information with Town Planner/Land Use Counsel Carboni.

Vice Chair Shedd asked if any member of the public wished to comment on this matter and there was none.

Vice Chair Shedd, the Members and the Applicants discussed the following highlighted topics: the current encroachment into the setback and the need for the Applicants to apply for a variance if the Applicants wanted to expand the nonconformity; Town Planner/Land Use Counsel Carboni's written note on this matter and her opinion that a variance was not required but a special permit was required; and a reconfiguration of the deck may not require a variance of a special permit.

Vice Chair Shedd recognized Attorney Zehnder (who stated that he did not have an interest in this matter) but suggested that a Member explain to the Applicants their right to withdraw their application without prejudice prior to a vote. Vice Chair Shedd explained this to the Applicants.

The Applicants requested a withdrawal of their application for a variance without prejudice.

**Member Braun made a motion to approve the withdrawal of the application for a variance in the matter of 2024-010/ZBA – Suzanne Parish and Veronica Janssens without prejudice.**

**Chair Lucy seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Hultin – Aye**

**Member Braun – Aye**

**Chair Lucy - Aye**

**Vice Chair Shedd - Aye**

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

After the vote, Vice Chair Shedd recognized Attorney Zehnder who recommended that the Members address the issue of the Applicants' application for a special permit in order to avoid a constructive grant situation.

Vice Chair Shedd asked the Applicants if they wished to withdraw the application for a special permit to which they replied in the affirmative.

**Member Hultin made a motion to approve the withdrawal of the application for a special permit in the matter of 2024-010/ZBA – Suzanne Parish and Veronica Janssens without prejudice.**

**Chair Lucy seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

**Member Braun – Aye**

**Vice Chair Shedd - Aye**

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

After the vote, Chair Lucy reassumed the leadership of the meeting.

**2024-011/ZBA-Janet Despres and Richard Despres**, for property located at 4 Kettle Hole Lane (Atlas Map 42, Parcel 266). Applicant seeks a variance to construct a garage within a side setback (10 feet where 25 feet required) on property in the Residential District.

After Chair Lucy read aloud the public notice for this matter, Member Hultin disclosed that he had previously done work for the Despres family and that Mr. Despres had worked for him on several occasions in previous years.

Chair Lucy recognized Attorney Zehnder who presented background information on this application. Chair Lucy confirmed for Attorney Zehnder that all full Members would vote on this matter.



The Members and Attorney Zehnder discussed the following highlighted topics: a request by Attorney Zehnder for a site visit that would consider all the variables for this proposed project; the possibility that a shed that is one the property that was moved there in 2009 may require a special permit; and the destruction of the shed for the proposed garage.

Attorney Zehnder stated that he was prepared to move forward this evening but he would request continuance this evening as he would submit a special permit application. Prior to the following motion, Attorney Zehnder confirmed with Chair Lucy that he would request a continuance this evening.

**Vice Chair Shedd made a motion to continue the matter of 2024-011/ZBA-Janet Despres and Richard Despres to November 18, 2024.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Member Braun – Aye**

**Member Hultin – Aye**

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Chair Lucy - Aye**

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

### **Minutes**

Chair Lucy led the review of the minutes of June 24, 2024 with the Members for comments or edits and there were none.

**Vice Chair Shedd made a motion to approve the minutes of June 24, 2024 as submitted.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Member Braun - Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Chair Lucy - Aye**

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

Chair Lucy led the review of the minutes of July 22, 2024 with the Members for comments or edits and Vice Chair Shedd noted in Board Discussion that “Member Hultin made a motion for Darrell Shedd to remain as Chair” and should be corrected to read “as Vice Chair”.

**Vice Chair Shedd made a motion to approve the minutes of July 22, 2024 as amended.**

**Member Crocker seconded the motion.**

**ROLL CALL VOTE:**

**Member Crocker – Aye**

**Vice Chair Shedd – Aye**

**Member Hultin – Aye**

**Member Braun - Aye**

**Chair Lucy – Aye**

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

**Board Discussion**

Rules & Regulations of the ZBA: Chair Lucy led the discussion on the Rules & Regulations of the ZBA with the Members. Chair Lucy noted that since Town Planner/Land Use Counsel Carboni was not present this evening this topic would be discussed, as well as a potential vote on this topic, would occur at the next meeting.

**Next Meeting**

Chair Lucy announced that the next meeting would be held on Monday, November 18, 2024 at 5:30 pm.

**Vice Chair Shedd made a motion to adjourn at 6:20 pm.**

**Member Braun seconded the motion.**

**ROLL CALL VOTE:**

**Member Hultin – Aye**

**Vice Chair Shedd – Aye**

**Member Braun – Aye**

**Member Crocker – Aye**

**Chair Lucy - Aye**

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

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

**From:** [Barbara Carboni](#)  
**To:** [Elizabeth Sturdy](#)  
**Subject:** FW: Despres - 4 Kettle Hole Road ZBA  
**Date:** Tuesday, January 21, 2025 9:45:37 AM

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Ben extension

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**From:** Benjamin Zehnder <[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)>  
**Sent:** Monday, December 16, 2024 5:56 PM  
**To:** Barbara Carboni <[bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov)>  
**Cc:** [campowabo@aol.com](mailto:campowabo@aol.com)  
**Subject:** Despres - 4 Kettle Hole Road ZBA

Hello Barbara

As counsel for applications I consent to an extension of the time for the Board to act through January 27, 2025 and for the Board to file a Decision with the Town Clerk through February 24, 2025, the applications for special permit and for variance.

Ben Zehnder

Benjamin E. Zehnder  
Benjamin E. Zehnder, LLC  
62 Route 6A, Unit B  
Orleans, MA 02653  
508.255.7766 – Office  
508.246.4064 – Mobile  
[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)

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**From:** Benjamin Zehnder

**Sent:** Monday, December 16, 2024 12:01 PM

**To:** [campowabo@aol.com](mailto:campowabo@aol.com)

**Subject:** RE: new plot plan

See attached for tonight.

Benjamin E. Zehnder  
Benjamin E. Zehnder, LLC  
62 Route 6A, Unit B  
Orleans, MA 02653  
508.255.7766 – Office  
508.246.4064 – Mobile  
[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)

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**From:** [campowabo@aol.com](mailto:campowabo@aol.com) <[campowabo@aol.com](mailto:campowabo@aol.com)>

**Sent:** Thursday, December 5, 2024 4:42 PM

**To:** Benjamin Zehnder <[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)>

**Subject:** new plot plan

Hi Ben

Please find attached the new plot plan. We decreased the depth of the garage 3 feet and moved the building 5 feet toward the cul-de-sac. This put the front corner in compliance and the rear corner at 18 feet. Take a look and let me know your thoughts. I understand if we get refused I won't be able to try for another variance but this refusal won't stop me from doing work that is in compliance with the zoning correct.

Rick

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Benjamin Zehnder](#)  
**To:** [Barbara Carboni](#)  
**Cc:** [Bob Freeman \(schobro@capecod.net\)](#); [Elizabeth Sturdy](#); [campowabo@aol.com](#); [Elisabeth Verde](#)  
**Subject:** 2024-11/ZBA - 4 Kettle Hole Lane  
**Date:** Thursday, December 26, 2024 11:09:09 AM

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Dear Barbara:

Would you please pass along to the Board of Appeals my request that the above matter be withdrawn without prejudice.

My regards to you, staff and the Board this holiday season.

Ben

Benjamin E. Zehnder  
Benjamin E. Zehnder, LLC  
62 Route 6A, Unit B  
Orleans, MA 02653  
508.255.7766 – Office  
508.246.4064 – Mobile  
[bzehnder@zehnderllc.com](mailto:bzehnder@zehnderllc.com)

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# GALVIN & GALVIN, PC

Attorneys and Counselors at Law

*A Professional Corporation*

10 Enterprise Street, Suite 3  
Duxbury MA 02332-3315  
(corner of Rtes 3A & 139)

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Robert W. Galvin, Esq.

Tel: (781) 934-5678 / (781) 834-4224

Facsimile: (781) 837-1030

David A. Henig, Esq. \*

*Robert E. Galvin, Esq. (1933-d.2020)*

*William J. Galvin, Esq. (1898- d.1995)*

\* also licensed in New York

January 23, 2025

**VIA EMAIL AND FIRST-CLASS MAIL**

Chris Lucy, Chair

Town of Truro Zoning Board of Appeals

24 Town Hall Road

P.O. Box 2030

Truro, MA 02666

**RE: 2024-004/ZBA - 113 Castle Road (Atlas Map 46, Parcel 398); Variance (height) or Special Permit for dwelling in the Residential District.**

Dear Mr. Lucy:

I am on receipt of the January 17, 2025 submission by Attorney Zehnder.

Since the Costas and I have not been permitted to enter the Holt Property we have not been able to verify the accuracy/completeness of the information.

It remains our concern that the building height of what has been constructed is an issue. Building height is to be measured from the average of the existing undisturbed grade (prior to excavating or filling) and the plans from last week are measured from the average of the altered grade 10' feet from each of the sides.

I am also attaching a photo from last weekend. If the plans submitted are accurate the average mean ground level is now 114.25' and the top of foundation is 114.50', only app. 3" of foundation would be above grade and the photo from at least this side clearly shows more.

All of the measured building heights on the as-built plans are removed (making it exceeding difficult to determine height). Prior building plans showed measurements that were not consistent and building heights should be measured/certified by an architect.

If the top of ridge is 143.5', the railing on the widow's walk (which is only attached at the second floor level and extends up above and separate and is not accurately depicted on the elevation plan) is too high and the flat roof area is above 23'.

The chimney also is not measured and is an estimated 5' to 6' higher and this also is not permitted to extend above the roof. The Costas were given strict instruction that features of this nature were not permitted and the bylaw is consistent with that restriction.

Lastly, the plans last filed showed a finished bathroom constructed in the basement and no other livable space. It seems highly improbable in light of the earlier plans provided that showed extra livable space that there is none now in the basement other than a finished bathroom.

The Costas prior points are incorporated by reference.

Very truly yours,

/s/ Robert W. Galvin

Robert W. Galvin, Esq.

cc: Barbara Carboni, Town Planner  
and Land Use Counsel

Ben Zehnder, Esq.

# Benjamin E. Zehnder LLC

62 Route 6A, Suite B  
Orleans, Massachusetts 02653

Benjamin E. Zehnder, Esq.  
bzehnder@zehnderllc.com  
Tel: (508) 255-7766

January 17, 2025

Chris Lucy, Chair  
Truro Zoning Board of Appeals  
Truro Town Hall  
24 Town Hall Road  
Truro, MA 02666

Via Hand delivery

**Re: 2024-013/ZBA – Peter and Melissa Costa**

Dear Mr. Lucy and Board Members:

Please find enclosed for consideration at the Board's January 27, 2025 continued hearing of the above matter 10 copies of my additional submissions on behalf of Paul and Amy Holt. I remain,

Very truly yours,



Benjamin E. Zehnder

Enc.

cc. via email only with attachments:

client

Barbara Carboni – Truro Land Use Counsel and Town Planner

Elisabeth Verde – Truro Town Clerk

Robert W. Galvin, Esq.

Liz Sturdy



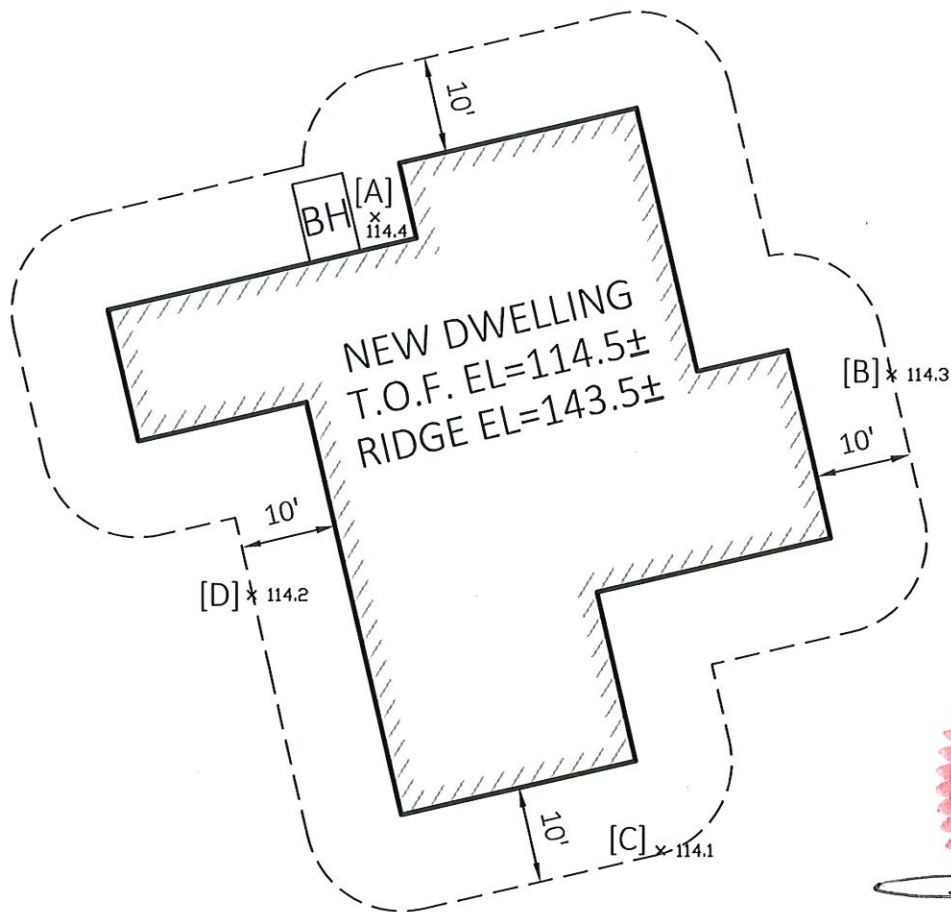
MEASURED POST-CONSTRUCTION HEIGHT CALCULATIONS:

MEASURED GROUND LEVEL =  $(114.4[A] + 114.3[B] + 114.1[C] + 114.2[D]) / 4$

MEASURED GROUND LEVEL = 114.25

MAXIMUM ALLOWABLE BUILDING ELEVATION:  $114.25 + 30 = 144.25$

MEASURED BUILDING RIDGE ELEVATION:  $143.5 < 144.25$



NOTES:

- POINT [A] IS THE POST-CONSTRUCTION MEASURED ELEVATION AT THE CENTER OF THE NORTH SIDE OF THE BUILDING. NO FILL WAS BROUGHT IN AT THIS POINT, THEREFORE THE MEASUREMENT WAS TAKEN ADJACENT TO THE BUILDING.
- POINTS [B], [C], AND [D] ARE THE POST-CONSTRUCTION MEASURED ELEVATIONS AT THE CENTERS OF THE EAST, SOUTH, AND WEST SIDES OF THE BUILDING, RESPECTIVELY. FILL WAS USED TO RAISE THE FINISHED GROUND LEVELS AT THESE POINTS, THEREFORE THE MEASUREMENTS WERE TAKEN TEN FEET OUT FROM THE SIDES OF THE BUILDING.

Amy Holt

c/o Pine Knoll Builders, P.O. Box 1347, N. Eastham, MA 02651

**BUILDING HEIGHT AS-BUILT PLAN**

113 Castle Road, Truro, MA



**J.M. O'REILLY & ASSOCIATES, INC.**

Professional Engineering & Land Surveying Services

1573 Main Street - Route 6A

P.O. Box 1773

(508)898-8601 Office Brewster, MA 02631 (508)898-6602 Fax

DATE:

1/16/2025

SCALE:

1"=20'

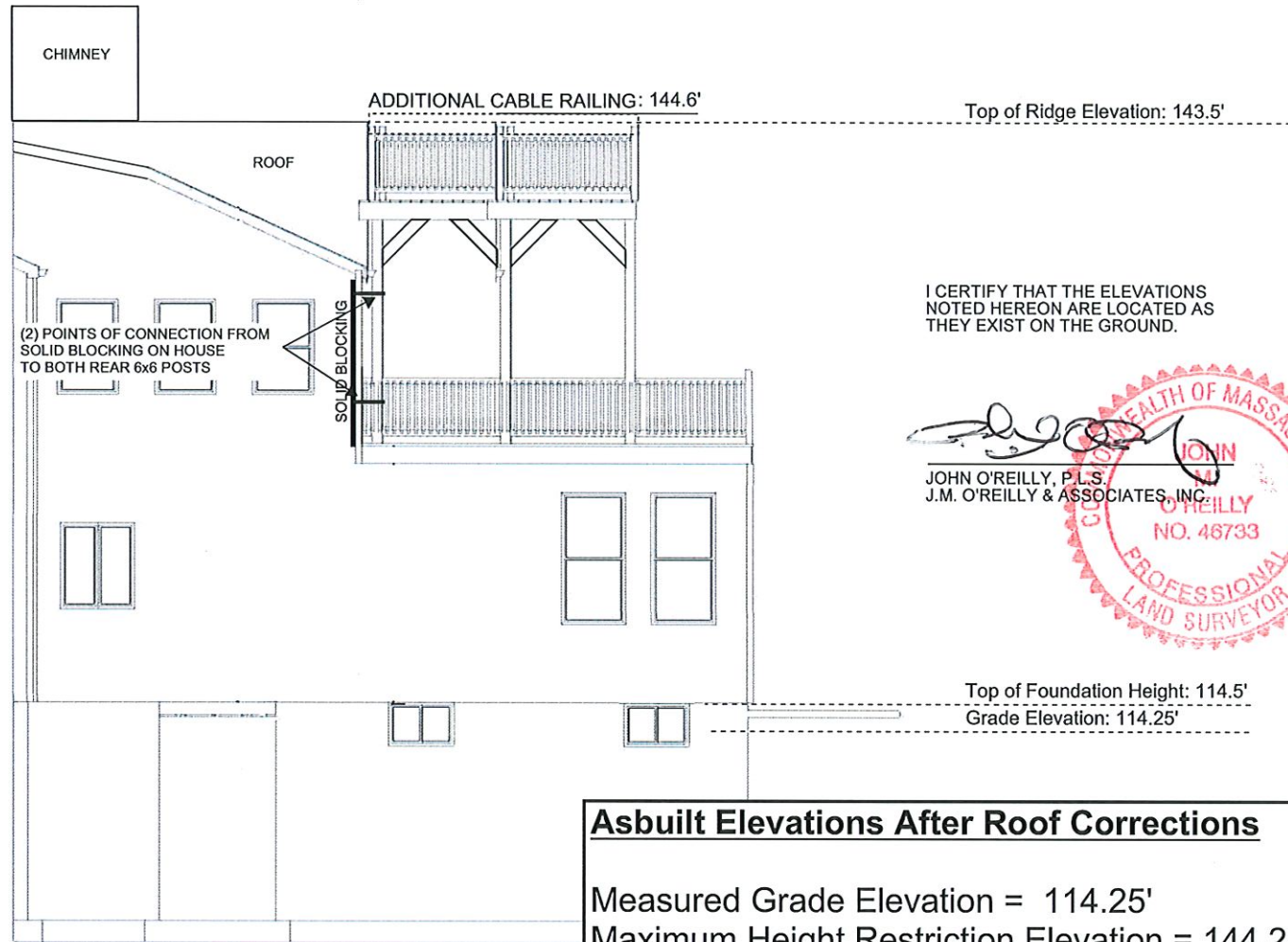
BY:

RFR

JMO

JOB NUMBER:

JMO-9225



G  
4/15 CROSS SECTION D  
SCALE: 1/4" = 1'-0"

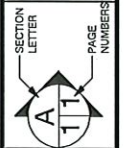
NOTE: The additional cable railing on the widows walk exceeds maximum height restrictions

### Asbuilt Elevations After Roof Corrections

Measured Grade Elevation = 114.25'  
Maximum Height Restriction Elevation = 144.25'

Top of foundation = 114.5'  
Top of highest roof ridge = 143.5'  
Top of main widow's walk railing = 143.1'  
Top of extra widow's walk railing = 144.6'

PAGE:



SCALE: 1/4" = 1'-0"

DRAWN BY: John Ferro

DATE: 2/15/2022

PINE KNOLL DEVELOPERS

Phone: 508-255-8292  
Fax: 508-255-8292  
Email: pineknoll23@gmail.com  
P.O. BOX 1347  
N. EASTHAM  
MA 02551

**SOFTPLAN**  
ARCHITECTURAL DESIGN SOFTWARE

Paul & Amy Holt  
113 Castle Rd,  
Turo MA  
02666