



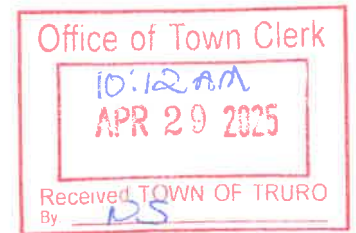
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

January 27, 2025 – 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, Robert Tilden (Alternate), Leah Camhi (Alternate)

Members Absent:

Other Participants: Barbara Carboni – Town Planner and Land Use Counsel; Ben Zehnder (Attorney for Janet Despres and Richard Despres – Applicants); Richard Despres (Applicant); Janet Despres (Applicant); Rich Roberts (Truro Voter and Abutter); A.J. Santos (Abutter to 4 Kettle Hole Lane); Peter Costa (Applicant – 5 Lily Lane); Robert W. Galvin (Attorney for Applicants – Peter and Melissa Costa – 5 Lily Lane); John Ferro (General Contractor for Applicants – Peter and Melissa Costa – 5 Lily Lane); Robert Reedy (Engineer/Surveyor); Attorney Ben Zehnder (Attorney for the Owners and Abutters at 113 Castle Hill Road – Paul and Amy Holt); Peter Madsen (Abutter)

Remote meeting convened at 5:30 pm, Monday, January 27, 2025, by Chair Lucy. Town Planner/Land Use Counsel Carboni 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 make a public comment and there were none.

Note: Chair Lucy then announced that the minutes on tonight's agenda would be moved to later this meeting and the hearings on the agenda would be brought forward.

Public Hearings – 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

Chair Lucy read aloud the application notice and announced that the Applicants have requested a withdrawal without prejudice of the application for a Variance and Special Permit in the matter of **2024-011/ZBA**.

Member Hultin made a motion to approve the withdrawal without prejudice on the applications for a Variance and Special Permit in the matter of 2024-011/ZBA.

Member Braun seconded the motion.

ROLL CALL VOTE:

Member Braun – Aye

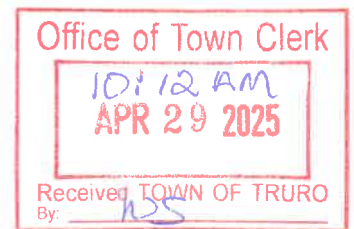
Vice Chair Shedd - Aye

Member Hultin – Aye

Member Crocker – Aye

Chair Lucy - Aye

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



2024-013/ZBA – Peter and Melissa Costa, relating to property located at 113 Castle Hill Road (Atlas Map 46, Parcel 389). 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: MEETING JANUARY 27, 2025/DEADLINE FOR FILING DECISION: FEBRUARY 10, 2025

Chair Lucy read aloud the application notice and announced that new material had been submitted.

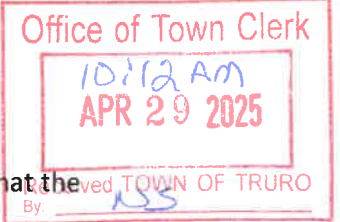
Chair Lucy recognized Member Hultin who announced his recusal in this matter moving forward as he was an abutter to an abutter within 300 feet. Member Hultin said he would rejoin the meeting once this matter was heard. There were no objections.

Chair Lucy announced that the Members voting on this matter would be himself, Member Braun, Vice Chair Shedd, Member Crocker, and Member Tilden. Chair Lucy also invited Member Camhi to participate by commenting or asking questions related to this matter.

Chair Lucy recognized Attorney Galvin who stated that he represented Melissa and Peter Costa. Attorney Galvin provided background related to the appeal that he had filed in this matter and summarized a presentation along with exhibits that he had prepared for the Members and public. The related material was included in the agenda for this evening's meeting.

Attorney Galvin highlighted the following topics and exhibits: background facts; the building permit that was issued in August of 2022; the original height on the property was measured incorrectly from the top of the foundation and not the building grade; the building permit was issued for a building that was too tall; the original design of the Holt's project; the Widow's Walk calculation was unclear in the original and updated building plans; the issue of livable space in the basement that would have required the Holts to file an application for a Special Permit; the determination that the Holts were not required to file an application for a Special Permit; a photo of the Holts' home from the Costa's home; the revised plans submitted by the Holt's; an unsolicited phone call to Attorney Galvin from Abutter Madsen who told him that he had been in the home and that there is a finished basement in the Holt's home to include a finished bedroom; the inability of the Costa's to measure the Holt's home as it was not permitted; the allegation that there are now 6 bedrooms in the home and not 4 bedrooms; the chimney and the observation deck are still too high; and the Holt's have not filed for a Special Permit for the amount of livable space in the basement that currently exists.

Chair Lucy recognized Mr. Costa who provided background information to include his contacting Building Commissioner Rich Stevens to express his concern about the size of the Holt's project when it



was in the framing stage. Abutter Madsen noted that he is a developer by trade and that the calculations for the Holt's project were incorrect.

Chair Lucy recognized Attorney Galvin who reviewed the updated plans dated January 16, 2025 and noted the incorrect measurements. Mr. Costa noted the height of the spiral staircase on the outside of the building and its incorrect measurements.

Chair Lucy and the Members commented on or discussed the following highlighted topics: chimneys are not included in the building height; two definitions of building height in the Zoning Bylaw and they are not consistent; the part of the building that is flat roofed is limited to a maximum height of 23' and it appears to be higher than that; a suggestion to review what is determined to be considered livable space in the basement; the potential issue that the project exceeded the maximum total square footage area; the measurement to the top of the ridge from the ground; the need to examine the most recent plan and review the mean grade elevation and the height of the ridge as long as the measurement is less than 30' relative to the engineer's plan; the measured grade elevation was 114.25'; a review of the septic plan for the project; the problem of the railing that is above the allowable maximum height; no proof of the number of bedrooms in the building but the building inspector, along with the health agent, will have to verify in order to ensure that the building is within code or have to comply with the code; the question of number of bedrooms is a Board of Health issue; the question of whether or not the property has received a Certificate of Occupancy; the ZBA has the authority to request the building inspector and health inspector inspect the property to determine if there is a zoning violation; the process to handle a decision tonight with an approaching deadline and the need to direct the building inspector and health agent to inspect the property for a zoning violation.

Chair Lucy recognized Attorney Zehnder who provided background information and the corrective actions which the Holts took. Attorney Zehnder also noted that the evidence in front of the board showed compliance to the Zoning Bylaw, and he confirmed that a Certificate of Occupancy has not been issued. Attorney Zehnder stated that a request for the building commissioner to inspect the property to determine that the property is compliant with the bylaw is appropriate but overturning the building inspector's previous determination is inappropriate. Attorney Zehnder requested that once the building inspector has inspected the property and makes a careful determination that a Certificate of Occupancy can be issued that he submit a written report so that the abutters may read it and know that the property is compliant.

Chair Lucy recognized Attorney Galvin who reiterated the observations made by Mr. Madsen.

Chair Lucy recognized Mr. Madsen who stated that he had not been in the building for nearly 9 months. Mr. Madsen noted that the building was not locked during the entirety of construction, so he had entered the building and observed a bedroom and bathroom in the basement. Mr. Madsen said that he had been asked to confirm the basement's bedroom and bathroom. Mr. Madsen also asked why the sunroom was not counted in the gross area if it had air conditioning and heat vents.

Member Braun noted that the appropriate action was to have the building inspector and health agent to inspect the property to determine code compliance. Member Braun then asked Town Planner and Land Use Counsel Carboni to provide guidance as to how to move forward in preparing a motion this evening.

Town Planner and Land Use Counsel Carboni suggested that the Members start with discussing the factual findings in this matter and that it would help develop a motion to vote on this evening. Town

Planner and Land Use Counsel Carboni also said that it was not necessary to take a roll call vote on each finding.

Chair Lucy then invited members of the public to comment on this matter and there were none.

Chair Lucy, Town Planner and Land Use Counsel Carboni and the Members then discussed the following factual findings to be put in the ZBA's decision: the ridge height is in compliance and less than 30' from the existing ground and even the pre-existing ground (unanimously agreed); the maximum height of the decks above the flat roof can be over 23' (unanimously agreed); direct the building inspector to determine if the height of the railing exceeds the Zoning Bylaw height limit by .35'; the board has to decide whether evidence in the records submitted has shown that the building is not compliant (the factual finding that the board would direct the building inspector to determine upon issuing a Certificate of Occupancy that he confirm that the internal living space was compliant; the height of the chimney is exempt from building height in accordance with the Zoning Bylaw's definition of maximum building height.

Chair Lucy asked if any member of the public would like to make a comment and Chair Lucy recognized Mr. Costa who said that he understood that if he built a flat roof house with decks and railing it would be permissible as long as it did not exceed 30' in height. Chair Lucy replied that it would be up to the determination by the building inspector of the Zoning Bylaw.

Chair Lucy made a motion to close the public hearing.

Member Braun seconded the motion.

ROLL CALL VOTE:

Chair Lucy - Aye

Member Braun – Aye

Vice Chair Shedd - Aye

Member Crocker – Aye

Member Tilden - Aye

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

Vice Chair Shedd made a motion that in the matter of 2024-013/ZBA – Peter and Melissa Costa the Board rejects the appeal of the Applicants. The Board finds that the height of the building conforms to Zoning Bylaws; the height of the deck complies with Zoning Bylaws; the building commissioner is to confirm the additional railing height as shown on the plans. The Board finds that the railing height exceeds the maximum height allowed by Zoning Bylaws by .35'. The Board finds that the internal living space is in compliance with the information presented before us tonight; however, the Board asks that before a Certificate of Occupancy is issued, the building commissioner is to inspect the premises and is to be sure that living space is in compliance with Zoning Bylaws. The Board finds that the chimney is exempt from height requirements as per Zoning Bylaws.

Member Braun seconded the motion.

ROLL CALL VOTE:

Member Tilden – Aye

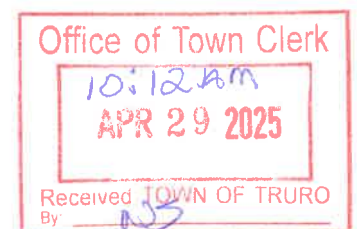
Vice Chair Shedd - Aye

Member Crocker – Aye

Member Braun – Aye

Chair Lucy – Aye

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



Town Planner and Land Use Counsel Carboni stated that she will have a draft decision prepared shortly and will make sure that it is filed with the Town Clerk within fourteen (14) days as it is a statutory requirement.

Town Planner and Land Use Counsel Carboni confirmed with the Members that Chair Lucy will sign the decision on behalf of the Board.

Zoning Task Force Update

Vice Chair Shedd provided an update to the Members and told the Members that the Zoning Task Force was commissioned by the Select Board and will look at three properties: the Walsh Property, the Truro Motor Inn Property, and the Shore Road/Highland Road Properties in the vicinity of Salty Market. The Zoning Task Force is tasked to change or add to existing bylaws to make it easier to build affordable and attainable housing in these areas. The task force meets weekly and has focused on the Walsh Property exclusively in order to meet a deadline in March to submit a draft Warrant Article ahead of Town Meeting.

Town Planner and Land Use Counsel Carboni added that the task force was also tasked with making other revisions and clarifications to the Zoning Bylaws but those will be pursued later. Member Camhi inquired as to why the Truro Motor Inn Property was not being pursued presently and Vice Chair Shedd replied that it would require too much to do prior to the approaching deadline of March for the Warrant's closing date. Member Braun noted that the work will be intensive and appreciated the efforts of the task force so far. Town Planner and Land Use Counsel Carboni said that the Zoning Task Force was an ad hoc committee and the appointments for members expire around May 2026. Town Planner and Land Use Counsel Carboni provided additional clarification regarding the Shore Road/Highland Road Properties and noted that the area has not yet been specifically defined. Town Planner and Land Use Counsel Carboni encouraged interested members of the community to visit the Zoning Task Force's tab on the Town's website for more information.

Minutes

Chair Lucy and the Members reviewed the minutes from August 19, 2024 for corrections or edits and Member Crocker noted that "Chair Roberts" be changed correctly to "Chair Lucy".

Vice Chair Shedd made a motion to approve the minutes from August 19, 2024 as amended.

Member Crocker seconded the motion.

ROLL CALL VOTE:

Member Braun – Aye

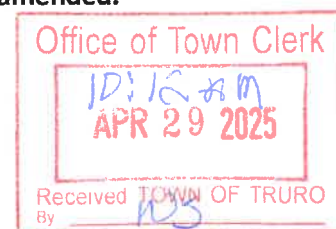
Vice Chair Shedd - Aye

Member Crocker – Aye

Member Hultin - Aye

Chair Lucy - Aye

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



Chair Lucy and the Members reviewed the minutes from September 23, 2024 for corrections or edits and there were none.

Vice Chair Shedd made a motion to approve the minutes from September 23, 2024 as submitted.
Member Crocker 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.

Chair Lucy and the Members reviewed the minutes from October 21, 2024 for corrections or edits and there were none.

Vice Chair Shedd made a motion to approve the minutes from October 21, 2024 as submitted.
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.

Next Meeting

Chair Lucy announced that the next meeting would be held on Monday, February 24, 2025 at 5:30 pm.

Vice Chair Shedd made a motion to adjourn at 7:12 pm.
Member Crocker seconded the motion.

ROLL CALL VOTE:

Member Braun – Aye
Member Crocker - Aye
Member Hultin – Aye
Member Tilden – Aye
Member Camhi – Aye
Vice Chair Shedd – Aye
Chair Lucy - Aye
So voted, 7-0-0, motion carries.

Respectfully submitted,



Alexander O. Powers
Board/Committee/Commission Support Staff

