



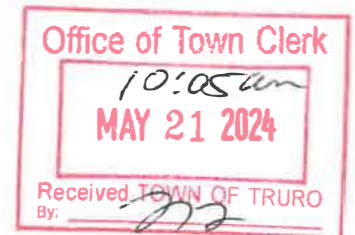
TOWN OF TRURO

ZONING BOARD OF APPEALS

Meeting Minutes

February 26, 2024 – 5:30 pm

REMOTE ZONING BOARD OF APPEALS MEETING



Members Present (Quorum): Chris Lucy (Chair); Darrell Shedd (Vice Chair); Dave Crocker; Art Hultin; Nancy Medoff; Joe McKinnon (Alt.); Russ Braun (Alt.)

Members Absent:

Other Participants: Barbara Carboni – Town Planner/Land Use Counsel; Bob Weinstein – Select Board Liaison; Christopher J. Snow (Attorney and Applicant); Ben Zehnder (Attorney for Abutters – Marie Belding and Pat Callinan); Marie Belding (Abutter); Pat Callinan (Abutter); William Rogers (Engineer/Surveyor for Christopher Snow – Applicant); William Henchy (Attorney for Robert J. Martin II – Applicant); Andrew Aiken (Owner/Manager of 100 Route 6 LLC); Jennifer Cabral (Applicant); Ben Zehnder (Attorney for Jennifer Cabral – Applicant); Christopher Agostino (Attorney for Crow's Nest Condominium Trust – Abutters); William Rogers (Engineer/Surveyor for Jennifer Cabral – Applicant); Lauren McKean (Park Planner for the National Park Service); Jim McCusker (Multiple Unit Owner at Crow's Condominium Trust); Lenny Dubois – Owner at Crow's Nest Condominium Trust)

Remote meeting convened at 5:30 pm, Monday, February 26, 2024, by Town Planner/Land Use Counsel Carboni who announced that this was a remote meeting which is being broadcast live on Truro TV Channel 8 and is being recorded. Chair Lucy introduced the Members of the ZBA.

Public Comment Period

Chair Lucy invited the members of the public to offer public comments and there were none.

Chair Lucy then moved the discussion on the next Agenda item, the Minutes, to later in the meeting due to the number of hearings and there were no objections.

Public Hearing (Continued)

2022-017/ZBA (VAR/SP) - Ebb Tide on the Bay Condominiums for property located at 538 Shore Road (Atlas Map 7, Parcel 7, Registry of Deeds title reference: Book 5671, Page 232). Applicant seeks an Amended Variance under M.G.L. Ch. 40A §10 and §40.3.B.2 and §30.9.C of the Truro Zoning Bylaw for a reduction in number of parking spaces (from 12 spaces to 8); a Special Permit under M.G.L. Ch. 40A §6 and §30.7.A of the Truro Zoning Bylaw for the relocation of three non-conforming structures on a lot in the Beach Point Limited Business District.

Chair Lucy recognized Attorney Snow who provided background information regarding this proposal and introduced the Applicant's representatives present at the meeting. Attorney Snow provided an update

to address the concerns expressed by the Members regarding the application at the previous meeting. Attorney Snow concluded with the benefits of the project and requested approval of the application.

Chair Lucy then invited the Members to comment on Attorney Snow's presentation and the Applicant's updated proposal. A discussion then ensued among the Members and Attorney Snow with input from Town Planner/Land Use Counsel Carboni on the following topics: the adverse impact of pile driving to the neighborhood, the setbacks, the increased living space in the units and the decreased number of parking spaces, the reconstruction as proposed is closer to the road, and the potential inclusion of 3-D projections in future applications to provide better visualization for the Members and the public regarding any projects.

Attorney Snow then proposed a continuance if that was agreeable to the Members and the Town Planner/Land Use Counsel Carboni. There were no objections and Attorney Snow will email Town Planner/Land Use Carboni the written and requested continuance to April 29, 2024 by tomorrow morning. The additional time will provide the Applicant to present an updated parking plan and address other issues raised by the Members during this meeting.

Chair Lucy then recognized the following members of the public who commented on this matter: Ms. Belding, Ms. Callinan, and Mr. Rogers.

Vice Chair Shedd made a motion to continue 2022-017/ZBA (VAR/SP) until April 29, 2024.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Medoff – Aye

Member Hultin – Aye

Member Crocker - Aye

Chair Lucy – Aye

Member Braun – Aye

Member McKinnon – Aye

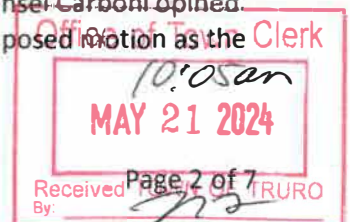
So voted, 7-0-0, motion carries.

Public Hearings (New)

2023-012/ZBA Robert J. Martin II and 100 Route 6 LLC for property located at 100 Route 6 (Atlas Map 55, Parcel 12). Applicant appeals a Cease-and-Desist Order issued by Building Commissioner on November 29, 2023, with respect to property located in the Seashore District.

Chair Lucy recognized Attorney Henchy who provided background information and an update on this matter. Attorney Henchy requested that the Planning Board reverse its decision on the Cease-and-Desist Order that required a cleanup of the site as the Applicant has complied. Town Planner/Land Use Counsel Carboni opined that there should be no discussion on constructive grant as it is currently under appeal.

After a discussion among the Members, Attorney Henchy, and Town Planner/Land Use Counsel Carboni, Chair Lucy and the Members discussed potential motions regarding this matter. Attorney Henchy stated his objection to a proposed motion citing case law and Town Planner/Land Use Counsel Carboni opined that the Members do not have to consider Attorney Henchy's opposition to the proposed motion as the matter for which Attorney Henchy cited was still being litigated.



A further discussion ensued regarding the Building Commissioner's Cease-and-Desist Order (including Attorney Henchy's position regarding the legality of the order) and the actions which the Applicant took to clean up the site.

Chair Lucy recognized the following individual of the public who commented on this matter: Ms. McKean. There were no other members of the public who commented on this matter.

Chair Lucy then announced that the Members would vote on a motion to uphold the Building Commissioner's decision to issue a Cease-and-Desist Order issued on November 29, 2023 and to incorporate the record of the appeal **#2023-006/ZBA** and to incorporate the contents of that record into the record of this appeal. Town Planner/Land Use Counsel Carboni recommended that this motion be voted upon prior to a motion regarding the Building Commissioner's decision to issue a Cease-and-Desist Order on November 29, 2023.

Chair Lucy made a motion to incorporate the record and the findings for the matter #2023-006/ZBA. Vice Chair Shedd seconded the motion.

ROLL CALL VOTE: *Prior to the vote, Chair Lucy announced that only the five full Members would vote.*

Member Crocker – Aye

Vice Chair Shedd – Aye

Member Medoff - Aye

Member Hultin – Aye

Chair Lucy - Aye

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

Vice Chair Shedd made a motion, regarding the matter of #2023-012, to uphold the decision made by the Building Commissioner to issue a Cease-and-Desist Order on November 29, 2023.

Member Hultin seconded the motion.

ROLL CALL VOTE: *Prior to the vote, Chair Lucy announced that only the five full Members would vote.*

Member Medoff - Aye

Member Hultin – Aye

Member Crocker – Aye

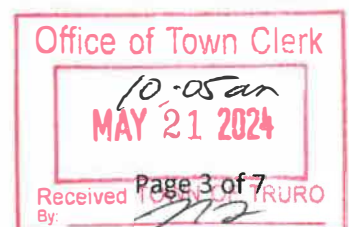
Vice Chair Shedd - Aye

Chair Lucy - Aye

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

After the vote, Attorney Henchy requested that the minutes reflect that the Members were satisfied that the Applicant's site had been thoroughly cleaned up and Town Planner/Land Use Counsel Carboni objected and opined that the Members should not make that finding. Chair Lucy agreed with Town Planner/Land Use Counsel Carboni's opinion. Attorney Henchy then requested that the minutes reflect that the Board included the entire record and its prior findings into this case but declined to address the matters which Attorney Henchy requested. Chair Lucy noted that the minutes would reflect this.

2024-002/ZBA - Jennifer Cabral (Nearen & Cubberly Nominee Trust, Christopher Snow, Trustee), for property located at 491 Shore Road (Atlas Map 7, Parcel 4, Registry of Deeds Book 8309 and Page 131). Applicant seeks a special permit or variance for alteration/reconstruction of pre-existing nonconforming use/structure in the Beach Point Limited Business District.



Chair Lucy recognized Attorney Zehnder who asked Chair Lucy for the name of the Members who would vote on this matter. Chair Lucy responded that the five full Members (Shedd, Medoff, Hultin, Crocker and Lucy) would vote.

Attorney Zehnder provided background information on this matter and noted that the sale of this property to the Applicant is incumbent upon the approval by the ZBA on this matter.

Members, Town Planner/Land Use Counsel Carboni, the Applicants, Attorney Zehner, and Attorney Agostino discussed the following highlighted topics: the determination whether a working studio on an accessory lot can be had without a primary residence on the property, taking a commonsense approach to this matter and confirmation by the Applicants that the use of the woodworking shop is explicitly for a hobby only, set back requirements, abandonment, accessory use without a primary dwelling, the consideration of a Special Permit for reconstruction of a preexisting non-conforming preexisting structure in Beach Point, an alteration of a nonconforming structure on a lot, and the accessory use of a lot without a principal use.

Chair Lucy asked if any member of the public wanted to comment and the following individuals were recognized: Mr. McCusker and Mr. Dubois.

Vice Chair Shedd made a motion that the proposed use in the matter of 2024-002/ZBA is permitted as an accessory use on the property pursuant to Section 50.1 Note 1 of the Zoning Bylaw.

Member Crocker seconded the motion.

ROLL CALL VOTE: *Prior to the vote, Attorney Agostino noted that he and his clients thought that this application would be "dead on arrival" when the application was considered by the ZBA.*

Attorney Agostino then requested a 3-minute recess so he may speak with his clients prior to the vote.

There was no opposition to the request by the Members so Chair Lucy granted the request. After the recess, Chair Lucy recognized Attorney Agostino who suggested an option for Attorney Zehnder and the Applicants to consider conditioning and delay the vote in order to avoid litigation. Attorney Zehnder stated that he was not in favor of a continuance as he had given Attorney Agostino a year to negotiate and did not. Vice Chair Shedd – Aye

Member Medoff - Aye

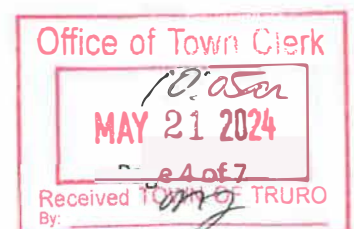
Member Crocker – Aye

Member Hultin - Aye

Chair Lucy - Aye

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

Chair Lucy and the Members then discussed proposed conditions/findings with input from Attorney Agostino, Mr. McCusker, and Attorney Zehnder prior to the next motion. The topics discussed included: limiting the woodworking shop to non-commercial use (for example but not limited to show or retail sales on the property), machinery operation is limited to the interior of the structure, use of noisy (heavy) machinery limited to 9 AM to 7 PM per the Noise Bylaw, on conversion of the structure for the purpose of habitation use, no sanitary facilities/no port-a-potty on the property, no further increase in size (area) of structure, no bulk storage of flammable or hazardous materials, all parking to be contained to designated area as on the Site Plan, no storage of unregistered vehicles on the property, no storage of materials outside of the structure and visible to the public, no burning of materials on the lot, and an adequate number of fire extinguishers are on the property.



Following this discussion, the Members agreed that the proposed conditions and findings were acceptable in this matter.

Vice Chair Shedd made a motion that in the matter of 2024-002/ZBA be granted a Special Permit for the alteration and reconstruction of the pre-existing nonconforming structure in the Beach Point Limited Business District and including the conditions as set forth by the ZBA and the finding that the alteration or extension is not substantially more detrimental to the neighborhood than the existing structures and that the alteration or extension will exist in harmony with the general purpose and intent of the Bylaw.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Crocker – Aye

Member Medoff - Aye

Member Hultin - Aye

Chair Lucy - Aye

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

After the vote, Attorney Zehnder requested that the Members consider a motion to allow the withdrawal without prejudice of Attorney Zehnder's application for a Special Use Permit.

Chair Lucy made a motion to allow the withdrawal without prejudice of the application for a Special Use Permit in this matter.

Member Hultin seconded the motion.

ROLL CALL VOTE:

Vice Chair Shedd – Aye

Member Crocker – Aye

Member Medoff - Aye

Member Hultin - Aye

Chair Lucy - Aye

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

Minutes

Chair Lucy led the review of the minutes of November 20, 2023 for corrections or edits and there were none.

Vice Chair Shedd made a motion to approve the minutes of November 20, 2023 as written.

Member Crocker seconded the motion.

ROLL CALL VOTE: *Member Braun was not a member on this date and did not vote.*

Member McKinnon – Aye

Member Crocker – Aye

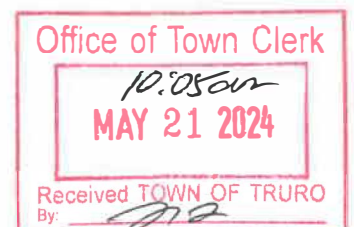
Member Medoff - Aye

Vice Chair Shedd – Aye

Member Hultin – Aye

Chair Lucy - Aye

So voted, 6-0-0, motion carries.



Chair Lucy led the review of the minutes of December 18, 2023 for corrections or edits and there were none.

Vice Chair Shedd made a motion to approve the minutes of December 18, 2023 as written.

Member Crocker seconded the motion.

ROLL CALL VOTE: *Member McKinnon was absent on this date and did not vote. Member Braun was not a member on this date and did not vote.*

Member Crocker – Aye

Member Medoff – 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 January 22, 2024 for corrections or edits. Vice Chair Shedd suggested an edit regarding the matter of **2022-017/ZBA (VAR/SP)**, on page 1, 3rd paragraph, to change “**voted in**” to “**expressed**”.

Vice Chair Shedd made a motion to approve the minutes of January 22, 2024 with the modification and correction made regarding the matter of 2022-017/ZBA (VAR/SP).

Member Medoff seconded the motion.

ROLL CALL VOTE: *Member Braun was not a member on this date and did not vote.*

Member McKinnon – Aye

Member Crocker – Aye

Member Medoff – Aye

Vice Chair Shedd – Aye

Member Hultin – Aye

Chair Lucy – Aye

So voted, 6-0-0, motion carries.

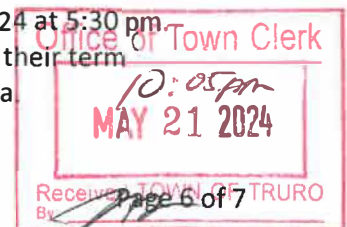
Board Discussion

○ Compliance with Filing Deadlines

Chair Lucy recognized Member Medoff who provided background regarding this matter and the need for compliance. Members and Town Planner/Land Use Carboni reviewed the ZBA’s 2024 Hearing/Meeting Schedule. Chair Lucy suggested adding the language that late filings will not be considered by the ZBA to the letter sent by the Planning Department to all applicants. Town Planner/Land Use Counsel Carboni opined that this was acceptable.

Town Planner/Land Use Counsel Carboni will prepare language for the ZBA’s 2024 Hearing/Meeting Schedule and to post elsewhere on the Town’s website as well as for an email. Town Planner/Land Use Counsel Carboni suggested that this be added as an agenda item for the ZBA’s next meeting and there was no opposition.

Chair Lucy reviewed the agenda for the next ZBA meeting on Monday, March 25, 2024 at 5:30 pm. Member Hultin also reminded the Members that if they wish to serve on the ZBA as their term approaches expiration they must reapply. This topic will be added to the next agenda.



Vice Chair Shedd made a motion to adjourn at 9:32 pm.

Member Medoff seconded the motion.

ROLL CALL VOTE:

Member McKinnon – Aye

Vice Chair Shedd – Aye

Member Braun - Aye

Member Medoff – Aye

Member Hultin – Aye

Member Crocker - Aye

Chair Lucy - Aye

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

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff

