

**TOWN OF TRURO
ZONING BOARD OF APPEALS
MEETING MINUTES
June 25, 2018
TRURO TOWN HALL**

Members Present: Chair-Bertram Perkel, Art Hultin, John Dundas, Fred Todd, John Thornley, Alternate-Susan Areson

Members Absent: Chris Lucy

Others Present: Interim Town Planner-Jessica Bardi, Atty. Christopher Snow, Kevin Shea, Atty. Liz McNichols, Judy Richland, Atty. Benjamin Zehnder, Fred Gaechter, Atty. David Reid, Frank Dubinski, Regan McCarthy, Nathalie Ferrier, Joanne Barkan, Joan Holt

Chair Perkel called the meeting to order at 5:30 pm.

Chair Perkel advised the audience that the Stephens Way item (2nd item listed on the agenda) was going to be continued. The ZBA received an application to continue.

Chair Perkel made a motion to continue 2018-003/ZBA-Susan Solomont to the next available meeting. Member Thornley seconded.

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

Chair Perkel then stated that the ZBA would take the next item out of order to discuss.

2018-007/ZBA – Kevin R. Shea and Judith Richland, for property located at 402 Shore Road (Atlas Sheet 10, Parcel 22, Registry of Deeds title reference, Book 13530, Page 012). Applicants are seeking a variance or amendment to the variance, whichever the Board deems appropriate, w/ref. to Section 50.1 (lot size) of the Zoning Bylaw that was granted on January 30, 2017 (docket #2016-013/ZBA) to construct a single family residence as per plans filed and extended to July 30, 2018. The applicant is requesting to substitute the previously approved plans and to amend the period to exercise the variance to January 30, 2019.

Atty. Christopher Snow approached the Board. He represents the applicants. He stated that he did not find that the Public Hearing had been published. Chair Perkel said that if Atty. Snow thinks that is a defect, then the Board will advertise and place the hearing on another agenda, however there is some sense that it was not necessary to advertise. Atty. Snow stated that not advertising could pose a significant hazard to the petitioner. If the petitioner waits the specified 20 days without an appeal, then pulls a building permit, then a person can come along and claim a defective notice and challenge the building permit for a period of up to 90 days. He would like the public hearing advertised for the next meeting of July 30th, 2018. Chair Perkel stated that they would advertise for the next meeting. Interim Town Planner Bardi interjected to say that she had confirmation from the Cape Cod Media Group of the public hearing being published on June 9th and June 16th. She brought forth a copy of the publication for Atty. Snow to review. Upon review, he stated that the ZBA could go forward with hearing the public hearing.

Atty. Snow said that Kevin Shea and Judith Richland have a Purchase and Sale agreement for the property next door, owned by Siniscalco and Rybeck. As he mentioned in an earlier presentation, the

problem with the variance of Siniscalco and Rybeck expires July 30, 2018 and is tied (he thinks accidentally) to a particular set of building plans. Atty. Snow's clients have different plans for this lot, all within zoning setbacks and dimensional requirements. The client has entered into an agreement that is contingent upon the Zoning Board of Appeal's approval of extending the variance. If the delay in acting upon the variance is without the fault of the landowner and is the fault entirely (or nearly entirely) of third parties over which the landowner has no control, that delayed time period can be forgiven, and the variance extended. The delay is only on the Siniscalco/Rybeck lot.

Member Dundas stated that based upon what counsel said, it makes sense to him.

Member Hultin has no problem with the extension of time to the variance.

Member Todd had a question regarding what's stated under Chapter 40 which says that they are not allowed to do a second extension. Atty. Snow explained that it has been interpreted under the equitable eyes of the highest court in the Commonwealth to apply their equitable powers to allow relief under an equitable principle.

Chair Perkel asked the attorney what he wanted the ZBA to do for them. Atty. Snow believes they are entitled to the fourteen-month extension that was lost to the Planning Board but deferred to his client. Mr. Shea would also like the fourteen months. During further discussion, Mr. Shea announced he would be applying to the Conservation Commission to build a sea wall. If that were approved, he would then be changing the situs of the house by moving the deck. Chair Perkel stated that if the Board is to equitably extend the variance, he does not think it would be appropriate for them to consider time for Mr. Shea to do something else. Chair Perkel then asked what the minimum extension time would be (the response was unintelligible) and asked if the Board would consider an eight-month extension. The Board was amenable to an eight-month extension. Atty. Snow then pointed out that they still had the issue regarding the plan. He asked if the Board would approve the plans Mr. Shea brought in with him and filed with his application. Chair Perkel recalled there was some discussion about the height of one of the structures, and he wondered whether they should start from scratch. Atty. Snow suggested perhaps holding another meeting before July 30th where public comment would be heard, regarding the new plan.

Atty. Liz McNichols approached the Board. She represents Barbara Rybeck and Joan Siniscalco. She is here to support Mr. Shea's application for the equitable tolling. The owners want to see the agreement with Mr. Shea go through, and they support the application to amend the variance. It is Atty. McNichols' understanding that the footprint Mr. Shea is considering is within the footprint of the plans originally submitted by Rybeck/Siniscalco. It complies with all zoning and setback requirements and he is not asking for any further relief. She pointed out that the proposed plan fits within the footprint of the plan they already approved. She would like to see the eight-month extension granted so they can exercise those rights granted by the Board.

Judy Richland, Mr. Shea's wife, had a question. She stated that the Zoning Board did approve the building on 408 Shore Road. They listened to the public and gave in to all their issues regarding building height. The building that's proposed at 402 Shore Road is exactly like the house on 408 Shore Rd. It is no larger, in fact it is smaller. She does not understand why the Zoning Board would not approve it. *It was determined to continue this hearing to the July 23, 2018 meeting. No vote was taken.*

Continuation – 2018-003/ZBA – Susan Lewis Solomont, by Atty. Sarah Turano-Flores, for property located at 37 Stephens Way (Atlas Sheet 58, Parcel 1, title reference: Book 10986, Page 185).

Applicant is seeking to overturn the Building Commissioner's decision to not issue a permit and is also requesting a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref. to Sec. 10.2 and 50.1A of the Truro Zoning Bylaw to construct a single-family dwelling.

As noted at beginning of meeting, the ZBA received an application to continue this to their next available meeting.

At this time, Member Thornley left the meeting.

Continuation – 2018-002/ZBA – Timsneck LLC, by Atty. Benjamin Zehnder, for property located at 10 Thornley Meadow Road (Atlas Sheet 53, Parcel 87, title reference: Book 30529, Page 134). Applicants are seeking a Special Permit and/or Variance, whichever the Board deems appropriate, w/ref to Sections 10.4 and 30.7B of the Truro Zoning Bylaw for additions to a pre-existing, non-conforming single-family dwelling.

Atty. Benjamin Zehnder approached the Board. His client has decided to redesign the project eliminating the swimming pool entirely, as the client and abutters were unable to come to an agreement. The plan in front of the Board is identical in all respects to what they have seen before except the pool, the pool house, and the pool deck, have been removed from the plan. What has been added is an at-grade paver sitting area. They have also created notes in the site plan in order to protect the conservation restricted area. They are going to install a four-foot high wooden snow fence, a geo-textile silt fence, as well as signage stating, "Do Not Enter-Conservation Restriction Area". There is also a new landscaping plan which shows a significant amount of screening between this property and the neighbor to the north.

Chair Perkel asked to see where the paved sitting area would be located. Atty. Zehnder located the correct plan and pointed out the location.

Member Areson had a question about the berm. She believed there had been some discussion about the removal of that berm between the two properties. Atty. Zehnder confirmed that the berm was indeed being removed. Member Todd asked whether the height of the berm was being used as part of the grade calculations in determining the building height. Atty. Zehnder stated that he didn't believe it was but had not specifically asked the engineers that question. Member Dundas asked what the Conservation Trust comments regarding the screening were based upon. Atty. Zehnder believes the Conservation Trust is saying that the natural flora and fauna area is a sandy heath, so extensive vertical planting would change the nature of that environment.

Fred Gaechter approached the Board. He wished to pass out a report which the Conservation Trust commissioned from a consultant regarding the plantings, so they would have it for the record. The gist of it is indeed the quantity of the plantings, and not necessarily the species. There were 46 plantings proposed for the lot, which appeared excessive to the Trust. The Trust would like it reduced significantly because those plantings could adversely impact the heathland. They would also like to see some conditions added if the plan is to be approved, with regard to the plantings such as; all plantings would be hand dug (no heavy equipment on the property), proper irrigation and replacement of any plants that fail, and other conditions that make it a viable plan. He also passed out a diagram of the neighborhood as it's important from a conservation perspective, to indicate what they are talking about. Mr. Gaechter proceeded to give a brief description of the properties in the neighborhood regarding locales of other conservation restrictions. The Trust would like the Zoning Board to consider this application not only in the context the legality of the amplification and the physical construction, but also the neighborhood in which it will reside and the mind-set of the Trust, the neighbors, and the Town. Chair Perkel asked how one would enforce the replacement of plants that fail. Mr. Gaechter stated that as a holder of the conservation restriction, which is approved by the Selectmen and the State, the Trust is required by State law to make an annual visit. They are to request the property owner for access, the Trust goes out and conducts their inspection of the land and puts together a formal report that goes to the State to ensure the Trust is doing their stewardship under the terms of that conservation restriction. The Trust's interest is only in the conservation restricted portion of the property. Member Hultin pointed out that the wording for that condition would be quite specific, to which Mr. Gaechter stated that the Trust would be happy to put something together.

Atty. David Reid approached the Board. He represents John and Yvette Dubinski who are the immediate abutters to the North. He stated that while certainly the pool, pool house, and pool deck are the biggest concerns of his clients, they are not the only concerns. He pointed out that there was a lot of time spent discussing the fact that under the special permit criteria, in addition to the Board's assessment of whether there is a detriment, they must also find (in order to grant a special permit) is what's proposed is in harmony with the intent and purpose of the Zoning Bylaw. The Comprehensive Plan says that the rural character of this neighborhood is a critical factor. One of the largest threats to that character is the over-development of residential sites, particularly in prominent locations of hilltops, shorelines, and more visible locations like that. This project is all of those. With the removal of the pool and the pool house a lot of that is eliminated from his client's perspective. The other concern they have is the lower exercise area. If you look at the North and West elevation, it's a point sticking out from the house in the direction of his client's property. The room appears to be all glass on the two sides which point toward the abutter and, as discussed with Atty. Zehnder, an open patio. His clients continue to have concerns that this very visible, very open, very bright glass area will continue to have an adverse effect on the area. There is also the legitimate question as to whether the exercise level constitutes a third floor. The addition that's proposed has two sides fully exposed, above grade. A third story is not permitted under the height regulations of the bylaw.

Atty. Reid then went on to discuss when the lot was created (in 2007, not in 1993 as Atty. Zehnder stated). It is a further subdivision of the original lot. When created in 2007 it did not have 150 feet of frontage on any road. The definition of lot frontage is that it must be measured along one road. Because the lot was created in 2007 without complying with the quantity requirement of frontage at that time, it is not a lawfully, pre-existing non-conforming lot. Chair Perkel asked if that were true in light of the amendment of 40A Section 7. Atty. Reid stated yes. Chair Perkel continued, stating that the amendment mentioned a ten-year statute of limitations, and if you count from 2007 to 2018 you get to ten. Atty. Reid countered that in March of this year the Appeals Court stated that it's not the correct measurement. In the case of a non-conformity by an ANR plan the statute of limitations does not begin to run until there is a severance of the two lots from common ownership. That did not occur, in this case, until 2017. The statute of limitations has not run out. It does not qualify for a special permit, only a variance. Member Todd stated in looking at the elevations he sees three stories, despite what the height regulations say.

Chair Perkel stated that Atty. Reid was presenting a jurisdictional issue, in a sense. Atty. Reid agreed. Chair Perkel said he was not prepared to put this to a vote by the ZBA until he gets the opinion of counsel. The Board needs to have another meeting, and to have an opinion. He also believes there will be a fair amount of conditions which will need to be reviewed before they vote on them. Chair Perkel said the hearing would need to be continued with Atty. Zehnder's approval. Atty. Zehnder will consent to a continuance but would like to be heard on legal issues before the Board breaks.

Frank Dubinski, son of Yvette and John Dubinski, asked to say a few words. His parents have lived at their current address for approximately 17 years. He is the generation who will inherit the house. He feels the important thing to note is the rural character of the town. People come to Truro for a reason. He has looked at the plans. He feels there are a lot of unanswered questions when it comes to the plan. Regan McCarthy approached the Board. She asked what would be the total square footage of the structures and the square footage of the impervious land covering? She stated that the largest square footage house in Truro is 9400 square feet. She believes that this house will be larger than that, and that it would be helpful for the public to know the facts on that.

Nathalie Ferrier approached the Board. She asked who on the Board would like to be a neighbor of a house with nine bedrooms, nine bathrooms, and a large exercise room. She is concerned with the approval of another large structure in Truro and would like the ZBA to consider what they are doing.

Joanne Barkan approached the Board. She understands that the Board will probably put conditions on the approval of the project if they vote to approve it. She would like to know if there is a condition that can be put on that would make it quite secure that a pool would not be put in later.

Joan Holt approached the Board. She'd like to discuss the issue of detriment to the neighborhood. She stated that everyone in South Truro understands that the reason Truro has these large "monstrosities" is because of the business of people deciding that it's not a detriment to the neighborhood. Even though there is no house size limit bylaw yet, there is a lot which the ZBA could rely on in saying that the expansion of the house will be a detriment to the neighborhood. She'd like the Board to tell the neighbors why they feel it will not be a detriment. The neighborhood was unable to prevent the house at the end of Cooper Road, nor the Klein house, from being built. Most of the houses in the area are under 2000 square feet.

Atty. Zehnder wished to respond. He's listened to people come up and say that the house is too big, the neighborhood is changing, etc. but that's not the Zoning Board of Appeals job. That is the Planning Board's job. The ZBA's job is to look at the application and consider the facts. In regard to whether the exercise room creates a third story, he read a portion of the bylaw which states "*A basement, at its narrowest, may have its full height above ground on not more than one side and which may not have more than half of its height above mean ground on the second side.*". Yes, there are two sides exposed, but one of those sides doesn't have more than half of its height exposed. It meets the basement definition.

The statute of limitations case which Atty. Reid referenced is a different statute then the 10-year statute which Chair Perkel alluded to earlier, and the property does indeed qualify for a special permit.

Atty. Zehnder stated that the Dubinski's son came up and stated that this project will change the rural characteristics of the neighborhood however, the Dubinski's property has a main dwelling of 2,652 square feet, 2 bedrooms, a cottage with 2 bedrooms (689 square feet), and a potting shed, all on a lot of 62,000 square feet. They didn't feel they were changing the rural character of the Town. The applicant for 10 Thornley Meadow road is applying for a single-family dwelling with six (not 9 as previously stated) bedrooms. The gross floor area of the first floor is 4,009 square feet. The second floor has 2,976 square feet, and the finished basement has 1,167 square feet. Total gross floor area is 8,152.

Member Hultin made a motion to continue 2018-002/ZBA-Timsneck LLC, for property located at 10 Thornley Meadow Road to the next regularly scheduled meeting (July 30th at 5:30pm).

Member Areson seconded.

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

Chair Perkel asked Atty. Zehnder to grant the Board a time extension. Atty. Zehnder agreed to a time extension of 60 days after the meeting with the understanding that the Board could ask for more time if needed, and Atty. Zehnder would consider it at that time.

Member Todd made a motion to adjourn at 7:30pm.

Member Hultin seconded.

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

Noelle Scoullar

Respectfully Submitted,

Noelle L. Scoullar

