



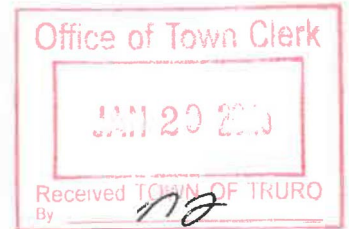
# TOWN OF TRURO

## 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**

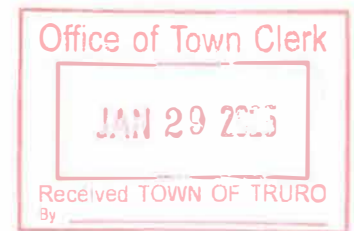
**Vice Chair Shedd – Aye**

**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 Lucy invited members of the public to speak (whether pro or con) on this matter and Chair Lucy 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:

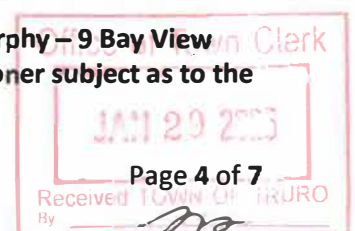
- No Certificate of Occupancy (CO) is issued until a determination is made by the Building Commissioner regarding the applicability of §40.3.

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.

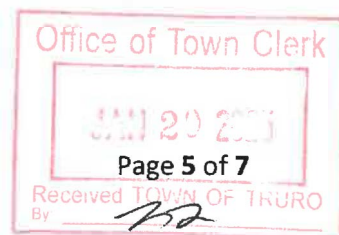
After the vote, Attorney Henchy stated that he had just sent his email as discussed to Town Planner/Land Use Counsel Carboni and Planning Department Assistant Liz Sturdy.

**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**

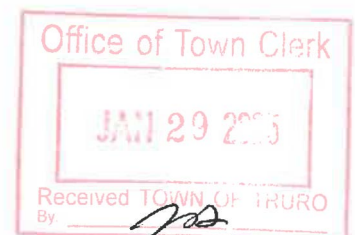
**Member Braun - Aye**

**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

