

TRURO PLANNING BOARD

October 17, 2017 – 6:00 p.m.

Meeting Minutes

Truro Town Hall

PLANNING BOARD MEMBERS PRESENT: Bruce Boleyn, Peter Herridge, Paul Kiernan, Jack Riemer, Mike Roderick, Steve Sollog, Karen Tosh

Other participants: William Rogers, Eric Shapiro; Tim Dickey, Brian Boyle, Katherine Black, Ben Zehnder, Attorney; David Reid, Attorney; Joanne Barkan, Joan Holt, Harry Terkanian, Interim Planner; Cally Harper, Town Planner

Steve Sollog called the meeting to order at 6:02 pm.

Public Comment Period

There was no public comment.

Temporary Sign Permit

Erik Spencer – seeks approval of 2 applications for 30 day Temporary Sign Permits pursuant to §11 of the Truro Sign Code for a 36” by 24” wide sign to be placed on the southeast corner of Route 6 and Union Field Road on town land from October 23 to November 24 and November 24 to December 25, 2017.

Mr. Boleyn moved to approve the two applications for temporary sign permits, Mr. Herridge seconded. So voted, 5-0. (Mr. Kiernan and Mr. Riemer were not present as of yet at the meeting.)

Mr. Kiernan and Mr. Riemer joined the meeting at 6:08 pm.

Continued Public Hearing - Commercial Site Plan Review

2016-008SPR Maria Kuliopulos – White Sands Beach Club, Inc. seeks approval of a Modification to a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by four. Plans include construction of a replacement building containing 17 rentable units and a hospitality room in the same location as a previously demolished fire damaged structure. The property is located at 706 Shore Road, White Sands Beach Club, Assessor's Atlas Map 39 Parcels 131, 158. Hearing continued from March 7, 2017, May 2, 2017, June 6, 2017, June 27, 2017, August 15, 2017 September 19, 2017 and October 3, 2017.

Ms. Harper recommended the Commercial Site Plan Review to be continued due to the related Zoning Board of Appeals hearing to be held on October 30th. She suggested and the applicant

agreed to request a continuance to December 6, 2017. Mr. Boleyn moved and Mr. Herridge seconded the motion to continue the Kuliopulos hearing until December 6, 2017. So voted, 7-0.

Continued Public Hearing – Commercial Site Plan Review

2017-007SPR Lexvest East Harbour, LLC seeks approval of a Commercial Development Site Plan pursuant to §70.3 of the Truro Zoning By-Law for consolidation of units to reduce the number of units on the property by combining units, proposal also includes some changes to site improvements. The property is located at 618 Shore Road, East Harbour Cottages and Condominium, Assessor's Atlas Map 5, Parcel 13. Hearing continued from August 15, September 5, 2017 and October 3, 2017.

Ms. Harper mentioned documentation in the staff report about drainage, a contract for trash removal, as well as a revised site plan.

William Rogers talked about the revised the parking, trash locations and a bicycle rack. Mr. Sollog mentioned the letter about the catch basin. Mr. Kiernan asked if there had been a response from Town Counsel on the Board's question regarding motel rooms and condominiums. Ms. Harper said no. Mr. Kiernan asked for clarification on the new parking plan. He asked the applicant if he is asking for a waiver of the "ten feet from property line" regulation. Mr. Rogers said he wasn't aware of this rule. There was further discussion about various parking spaces. Mr. Rogers stated that the building inspector had approved the plan.

Mr. Kiernan asked the applicant to describe the trash containers. The answer was that they will be contained within a wooden structure with a hinged lid. Mr. Kiernan asked if the applicant knew if the Board of Health approved of this structure. Mr. Riemer asked for pictures of the trash cans and structure. Mr. Kiernan then asked to return to the discussion about parking space regulations. He said there are six parking spaces that are in violation of the bylaw, including rules about 90 degree parking, design criteria, overhangs and aisles. Mr. Sollog pointed out that the parking in question is parallel parking, not 90 degree. Mr. Sollog said that the Board had them change the parking so no one would back onto Rt. 6.

Mr. Kiernan brought up the fact that state law says that when you have 25 parking spaces, you have to have a handicap parking space. For 26-50 spaces you have to have 2 handicap parking spaces. There are no handicapped parking spaces marked on this plan. Mr. Sollog asked the applicant if he could provide a handicapped space. Mr. Rogers said he would mark # 4 and # 5 for handicapped. Mr. Kiernan asked if there wasn't a two-way road there. Mr. Kiernan would like to ask a state official to approve the new plan since he doesn't think the Board is equipped to determine the legal status. Mr. Sollog said he would like the building inspector to look at the handicapped parking proposal. Mr. Kiernan asked if there is a time constraint on this site plan. Ms. Harper said there is no time constraint. She asked the Board to be specific in what they want

the applicant to provide. Mr. Sollog said he would like a new approved plan by the Building Commissioner and a photo of the trash receptacles.

Mr. Riemer said he is unwilling to approve a plan that involves, walkers, bicycles, etc. that does not meet the minimum standards. Mr. Sollog said the reality is that these parking places are off the road and they are far off the pavement. Mr. Herridge, Ms. Tosh and Mr. Boleyn said they will approve a plan that Town Building Inspector approves of, once handicap parking is added.

Eric Shapiro, Principal of Lexvest, expressed his feelings that it pains them to have come back and not please the Board. He understands that it is their responsibility to follow the regulations. The property is approved for 17 parking spaces. Their intent was to reduce the density and increase the parking capacity, and to remove parking from the street. If it is not approved today, it will continue in the way it has been with more density and with parking on the street.

Ms. Harper asked Mr. Riemer what he wants to see from the applicant. Mr. Riemer wants the Fire Chief to approve the parking plan, including access space 4 and 5 and the nearby buildings. Ms. Harper said the Fire Chief has this plan but hasn't responded. She will reach out to him and ask him. Mr. Riemer brought up the subject of illegal parking on the road. Mr. Shapiro said that they are trying to exceed the 2 spaces per unit. Mr. Terkanian said that illegal parking is dealt with by the Selectmen and the Police department.

Ms. Harper referred to the Zoning Board of Appeals decision which she had given the Board members copies of. She will give them another copy if they need one. Mr. Kiernan said that his question relates to the site plan review of this applicant. Currently an applicant insists ... the applicant no longer has to meet the Town's definition of motel room. Can the motel portion consist of more than one room and still be licensed as a motel? Mr. Kiernan said he wants another site visit to look at the new parking spaces. Mr. Herridge moved to continue the hearing to November 8, 2017, Mr. Boleyn seconded. So voted, 7-0.

Public Hearing – Accessory Dwelling Unit Application

2017-008PB Brian Boyle - seeks approval of an Accessory Dwelling Unit with the Clerk of the Town of Truro pursuant to §40.2 of the Town of Truro Zoning Bylaw with respect to property 3 Tom's Hill Path, Truro and shown on the Truro Assessor's Map, Sheet 45, Parcel 72.

Ms. Harper said she reviewed the application and found that the application was complete. Mr. Sollog said the Attorney General has just approved the new by-law. Mr. Dickey talked about the project. Mr. Kiernan said there are a couple of things that are unclear. Existing structures information is needed, set backs, heights, list of abutters, existing floor plans. He told the applicant that "You have the dubious distinction of being the first person to apply for this permit." You could help the board with a line up of what applicants need. There is a requirement

for two parking spaces. Mr. Dickey said that those are on the site plan. Ms. Harper said she was wondering where the parking spaces of the ADU would be located. There are two spaces for the ADU and two for the house.

Ms. Harper said that her interpretation of the bylaw is that the principal dwelling be identified on the plan and the applicant was not responsible for submitting floor plans for the principal dwelling. Ms. Harper said the Board simply has to be able to identify where the principal dwelling is located to know that the accessory dwelling is subordinate in use. They are not required to show the interiors or elevations of the principal dwelling. Mr. Kiernan said it would benefit the bylaw for there to be a section to show what things the Planning Board can waive. Building plans are needed for both buildings. We should add to it that we should have a site visit. A benefit for this application is that it (the dwelling unit) exists already.

Ms. Black spoke in support of the project, for which she is an abutter. Mr. Kiernan thinks the Board should make a site visit. Mr. Dickey suggested approval tonight, and a site visit later because the applicant has met the requirements. The approval can include an agreement (for year round tenancy) between the applicant and a renter be conditioned. Mr. Kiernan disputed that the application was complete. He feels that due diligence requires a site visit because he would like to see the impact on abutters. Mr. Kiernan also asked how the Board can make a decision on something they have never seen, in which case he was told that the Board does that by looking at the plans. Mr. Riemer followed up by stating that the Board must visit the site in order to consider roof design, building orientation, door size and location. Mr. Kiernan, Mr. Riemer and Mr. Boleyn would like a site visit. Mr. Sollog said the site visit is not required in the bylaw. The plans for the main house, which is in excess of 2,000 square feet, are on file. Ms. Harper asked Mr. Kiernan if there was something specific he would gain from a site visit that would affect his approval. Mr. Boleyn said he thinks a site visit would be beneficial. A site visit was then scheduled for Monday the 23rd, 3 pm. Mr. Herridge made a motion to continue the hearing to Nov 8, 2017, Mr. Kiernan seconded. So voted, 7-0.

5 minute break

7:55 pm

As Built Plan Approval, Waiver Request and Covenant Release Request

2015-012PB Irving Ziller seeks approval of as built plan including as built road grade, waiver of one year growth requirement and complete release of covenant. The property is located at 1 & 1A Quail Ridge Road, Assessor's Atlas Map 43, Parcels 27 & 28. Continued from October 3, 2017. Request for extension anticipated.

Mr. Ben Zehnder, attorney for Irving Ziller, spoke about the request for release of covenant. He mentioned the issues that might be impediments for the Board: the road which not constructed at the 5% grade which had been approved, whether the curb radius meets zoning requirements, and

that a turn around was not constructed. He referenced the minutes of two previous hearings, December 22, 2015 and February 25, 2016 and gave copies to the Board. The Board brought up the curb radius and the circular turnaround at the December 2015 meeting and conditioned that the building inspector must determine if the turnaround was compliant with zoning. The Board approved the definitive plan with conditions and waiver requests, on December 22, 2015. On Feb 25, 2016, the minutes show that the applicant met with the Building Inspector who determined that the radii met the 20 foot zoning requirement. The Board then voted to accept Form D Covenant. That leaves the issue of the 8% road. It was Ben's opinion that the driveway is not overly steep. It operates as a driveway; it won't operate as a through street. It can't be used for any other purpose. Mr. Zehnder asked for the release of the covenant. Mr. Boleyn asked again if it is a driveway or a road. Technically it is a road, but as a practical matter it operates as a driveway. It is conditioned not to be used as an expansion for other lots.

Mr. Herridge said it would be a detriment to try to change the grade, bring bull dozers in, etc. Mr. Sollog agreed. This road will serve no other houses. It has a 40 ft right of way. He entertained a motion to release the covenant. Mr. Kiernan asked Mr. Zehnder if the Planning Board can waive a bylaw. Mr. Zehnder said no, the Board cannot waive a bylaw. Mr. Zehnder said that although you cannot waive a bylaw, your decision doesn't confer zoning status on the property. If your approval of this plan doesn't meet Zoning, the building commissioner deals with that by not issuing a building permit. The applicant can then seek Zoning relief. Mr. Kiernan said the Board has approved something that is in violation of Zoning. He continued to bring up other items that the Planning Board waived that it should not have. Mr. Sollog said that the Board has approved the plan, and it is not possible to rescind that approval. The only item that was not attended to was the 8% grade. Mr. Kiernan made a motion that this Board agree that the zoning regulations still apply to this road, and that the bylaw that was waived was done so in error. Mr. Sollog interrupted Mr. Kiernan and refused to allow the motion. Mr. Riemer seconded Mr. Kiernan's motion. Mr. Sollog said the motion was out of order. Ms. Harper explained that what was before the Board was to release the covenant, to not release the covenant or to continue the hearing. Mr. Kiernan made a motion to not release the covenant. Mr. Terkanian said you have to specify in detail how the applicant does not meet the requirement of the approved subdivision. Mr. Kiernan said that the grade does not conform to the approved grade and the road does not meet the requirement of 3.6.3. Mr. Terkanian said that the Board approved the road profile. Mr. Riemer said that as a general rule, unless a waiver is requested in writing, and the Board does not act to approve or disapprove, the regulation is in effect. Mr. Sollog said that we approved the subdivision. Mr. Riemer said that Mr. Kiernan referred to the fact that a waiver was never asked for, never considered. So that regulation (% grade) is in effect. Mr. Zehnder said that if the applicant is concerned about the grade of the road, they will fix it. But this is not a second look at the subdivision approval. Mr. Kiernan asked about the revised plan dated 6/6/17 and when it was approved. Mr. Sollog explained that this is the "as built" plan for which the release of covenant is being considered tonight.

Mr. Sollog made a motion to release the covenant, and accept that the grade the grade, although outside the 5% requirement, is not a safety hazard, waive the one year's growth, and have our DPW inspect the road. Mr. Roderick seconded the motion. Mr. Herridge added that with the understanding the Board may have made mistakes, the definition of road is not sacrosanct to Truro. Mr. Sollog repeated that we do not set precedent. So voted, 5-2. (Mr. Riemer and Mr. Kiernan opposed.)

Mr. Sollog referred to a request from Mr. Kiernan to ask the Town Counsel about definitions: "Currently an applicant before the Planning Board insists that because the current motel is in condominium ownership, the applicant no longer has to meet Truro's definition of motel room (only one room) (definition section 10.4, motel, page 5). Can the motel portion of the project contain condominium units of more than one room and still be licensed as a motel?" Mr. Sollog offered to take it to the Town Manager to be forwarded to Town Counsel. Mr. Kiernan said he would rather it go to a vote. Ms. Harper said she can ask the Town Manager if this question could be discussed at a workshop or it can be added to a future agenda on definitions. Mr. Sollog said that this is a specific question that we shouldn't keep putting off. He went ahead and asked for a vote to ask the Town attorney Mr. Kiernan's question. So voted, 5-2 (Ms. Tosh and Mr. Sollog opposed).

8:40 pm

Discussion of Public Hearing Process - Rose Hill Lane

Discussion of the Public Hearing process pursuant to the MGL c.41, section 81 W for the Becker subdivision and prepare a written description of and/or reasons for the proposed modification or rescission. The property is located at 3, 5, 7 Rose Hill Lane, Assessor's Atlas Map 54, Parcel 33.

Mr. Riemer, Mr. Kiernan, Mr. Terkanian, and Mr. Boleyn, recused themselves and left the room. Ms. Harper, said that at the last Planning Board meeting, October 3rd, the Board voted to amend or revoke the subdivision plan which triggers the public hearing timeline. The statute of 81 W is not crystal clear on this process. To do this in a diligent way, we need to prepare a statement. I have drafted a statement for the Board which needs review and reasons added for going into the 81 W process. The remaining members will vote on the statement. Or you can vote that the chair can approve the statement. Or you can edit and vote later and then it gets certified by the clerk. Mr. Sollog read Ms. Harper's statement: "Pursuant to G.L. c.41, §81W, to consider modification, amendment or rescission of the definitive subdivision plan of land, entitled "Definitive Subdivision of Land in Truro, made for Gary and Guity Becker," dated March 26, 1997, prepared by Slade Associates, Inc. Surveyors, and endorsed by the Truro Planning Board on October 15, 1997. The Board will consider whether the passage of time, changes in circumstances, amendments of the Board's Subdivision Rules and Regulations or other reasons necessitate reconsideration of the original endorsement, including underlying waivers of the Board's Subdivision Rules and Regulations."

Mr. Sollog explained what he understands the Board's concerns are. The road wasn't built in two years and the abutters have brought up concerns about the changes that have occurred since the subdivision approval 20 years ago. Ms. Harper reminded the Board that we are already in the 81 W process. The Board needs to state a reason or reasons to amend or rescind the plan. Mr. Herridge said he thought that their time has run out. But was there a time limit? Ms. Harper said she went back and looked at the regulations in place in 1997, and if you look at that, page 54 of the regulations, "or shall be required to meet the standards in place at the time of completion." Mr. Sollog said that therefore this Board would like to review the specifications. Ms. Tosh prefers Ms. Harper's statement, since the road was not built and there are changes and other circumstances, including what has happened on Fisher Road in the past 20 years; one new habitable studio, and 8-10 houses built. We should consider traffic on Fisher Road and all the changes that have occurred. Ms. Harper is not sure we can bring in research on Fisher Road. Ms. Tosh said we can consider safety, since the road it empties on to Fisher Road. We should vote on the statement first before we hear from abutters.

Attorney David Reid came forward and talked about the procedure for rescinding or modifying the plan. He said the planner has done a good job of framing this, and if the Board is considering a hearing date, he can't be here November 8th. There is a 135 day time frame which started October 3rd. That will be up Feb. 15, 2017.

Joanne Barkan asked for clarification. 135 days to make a decision? The decision whether or not to release the covenant. (Not the question). If all the parties don't agree, then what happens?

Joan Holt came forward and said that she was on the Planning Board and is one of the signatories on the original plan. She said she followed the crowd and feels it is important that the issue of safety be included now. She lives off Fisher Road and makes that turn with her heart in her mouth. She wants the Board to be able to reconsider the safety issues.

Ms. Harper said the Board can vote to approve the chair to approve the edits or approve the statement in the material. Mr. Sollog asked if the term safety a viable addition. Yes, it can be added. Ms. Tosh revised the statement that Ms. Harper wrote for the board's approval. "Pursuant to G.L. c.41, §81W, to consider modification, amendment or rescission of the definitive subdivision plan of land, entitled "Definitive Subdivision of Land in Truro, made for Gary and Guity Becker," dated March 26, 1997, prepared by Slade Associates, Inc. Surveyors, and endorsed by the Truro Planning Board on October 15, 1997 of record in Book 538, Page 6. The Board will consider whether the passage of time, safety concerns, changes in circumstances, amendments of the Board's Subdivision Rules and Regulations or other reasons necessitate reconsideration of the original endorsement, including underlying waivers of the Board's Subdivision Rules and Regulations since the road was not constructed within the time frame

required by the then-existing bylaws.” Mr. Herridge moved to submit the statement to the Town Clerk, Ms. Tosh seconded. So voted, 4-0-3. (Mr.. Boleyn, Mr. Kiernan and Mr. Riemer had recused themselves.)

Ms. Harper asked if she can reach out to those involved for their availability for public hearing. The Board nodded their approval.

Ms. Barkan again asked for clarification of the 135 days. Ms. Harper said it starts October 3, 2017 and from that date, the Board needs to act within 135 days.

9:10 pm

Open Discussion of Possible Zoning Bylaw Amendments

The Planning Board will consider possible amendments to the zoning bylaw, including, but not limited to, size restrictions for residential structures in all zoning districts. The Board will consider holding public forums and other means of outreach for obtaining citizen input and whether a subcommittee should be formed to review possible zoning amendments.

Mr. Sollog said that where we left off, we were going to have the selectmen look at our survey. We are still waiting for a response from them. They probably looked at it tonight. Mr. Kiernan said he has gotten assessors’ data. It is not as complete as it could be. He has also gotten a copy of all the building permits that have been issued. Some building inspectors list the square footage, some don’t. It will require another trip to the building department.

Review and Approval of Meeting Minutes

October 3, 2017 Regular Meeting

The spelling of Joanne Barkan’s name needs correcting. On page 5, “assessors data” not “tax documents.” Mr. Herridge moved to approve the minutes as corrected, Ms. Tosh seconded. So voted, 7-0.

Reports from Board Members and Staff

Town Planner Report

The Select Board liaison asked that Planning Board members use their Town email accounts.

Ms. Harper gave a brief preview of items on the November 8th agenda.

There was discussion about the November 21st meeting, two days before Thanksgiving. It may be possible to cancel this meeting.

Mr. Herridge made a motion to adjourn. Mr. Riemer asked if we have any workshops scheduled. Not as of yet. He asked further if there is a meeting scheduled with the Selectmen. He is interested in learning about the discussions regarding year round condos. He also wanted to know who the Water Resources chair is. Mr. Sollog said there has been turnover on the Board of Health. Maybe that should wait a month or two.

Mr. Boleyn seconded the motion to adjourn. So voted, 7-0. Meeting adjourned at 9:30.

Respectfully submitted,

Katherine Black

