

TRURO PLANNING BOARD WORKSHOP

September 22, 2016— 5:00 pm

Truro Town Hall

Planning Board members present: Bruce Boleyn, Peter Herridge, Jack Riemer, Lisa Maria Tobia. Absent (excused): John Hopkins, Steve Sollog, Mike Roderick

Other participants: Bob Weinstein, Chuck Steinman, Joann Barkin, Anne Greenbaum, Joan Holt, Maureen Cronin, Jon Friedman, Susan Howe, John Marksbury, Jay Coburn, Katherine Black, Carol Ridley, Planning Consultant

Meeting was opened 5:06 pm by Ms. Tobia.

Public comment

There was no public comment.

Ms. Tobia spoke about the purpose of the workshop, to discuss policy and procedural issues regarding three zoning topics and gather public input. She stated that the order of discussion will be first Water Resources, then the Seashore District and finally the Affordable Accessory Dwelling Units. The Board will discuss their thoughts and the questions they have and then welcome public comment in order to provide Town Counsel with direction and guidance for drafting new by-laws on these topics.

Section 30.4 Water Resource Protection Overlay District

Ms. Ridley addressed the issue of the protection of our ground water which is our drinking water supply. The Board was approached by the Provincetown Water Department to consider an amendment to the existing Water Protection District, which is all the Zone 2's, to revisit the map in order to incorporate the expanded Zone 2 and all well fields. There have been some modifications to those Zone 2's by the Department of Environmental Protection. There is a mapping and boundary question. During this review the question was also asked whether the bylaw should be revised. The State provides a basis for local regulations which are enacted by Zoning or Board of Health. More recently we've learned that BOH and Water Resources Oversight Committee have also been looking into these issues. Ms. Ridley has spoken with the Truro Health Agent Pat Pajaron about scheduling a joint meeting with the Board of Health and the Water Resources Oversight Committee so that we can benefit from their expertise in order protect our water resources.

Public Comment

Bob Weinstein introduced himself and said he is not speaking in his capacity as a member of the Board of Selectman. He also stated that he is a liaison for the Water Resources Oversight Committee. He has a concern about wells #4 and #5 on the map provided in the packet. Those wells are in proximity to what was the North Truro Air Force Base. The National Seashore and the Department of the Interior are engaged in removing several of the buildings on that site.

There is an active problem of asbestos there, as well as concerns about the chemical PCB. He does not know if these wells have been tested for volatile chemicals, but wants to be sure these issues are addressed.

Mr. Riemer stated that he doesn't find in the packet of information provided an attempt to identify sights in Truro to be developed for future public water needs. He hopes that would be part of the discussion.

Maureen Cronin, a member of the CPC, was wondering about the date of the map, 1990. Ms. Ridley said that that map is outdated in some respects. The map that the Board has in their packet is the suggested new map provided by Provincetown Water Department in 2015 to propose expanding the boundaries. That is not the by-law map, and it is up to date.

Section 30.3 Seashore District

Attorney Katherine Laughman gave a power point presentation about the state of the law and policy considerations regarding the Seashore District. She was in attendance at the Truro community meeting held about a month ago. She has been speaking with Ms. Ridley and Ms. Palmer about the concerns that have been raised.

Ms. Laughman began by referencing the Zoning Act, G.L. c.40A, § 3, second paragraph: "No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building." This Zoning Act identifies several means of regulating structures used for single-family residences, including: bulk, height, setbacks, yard size, open space, parking, and building coverage requirements.

As she showed her power point presentation, Ms. Laughman read from and discussed the following:

Alone or in combination, various dimensional controls may create a cap on the size of any single-family house that can be built on any lot, though the effect will be diminished on larger lots. Zoning devices that affect the exterior dimensions of a house, will necessarily affect its interior area.

There was a court case by the Supreme Judicial Court: 81 Spooner Rd. LLC v. Town of Brookline, 452 Mass. 109, 116-17, 891 N.E.2d 219, 225 (2008) The Court determined that dimensional, bulk, and density requirements may properly regulate single-family residences so long as they do not set minimum or maximum levels of interior area.

The Supreme Judicial Court has concluded that regulation of the bulk of a building by considering its internal area, as through the use of a floor-to-area ratio, is a generally recognized and accepted principle of zoning, **provided the effect of such regulation on the interior area of such structures is incidental.**

Ms. Laughman then stated that she understands there have been discussions about amendments to the Zoning By-laws that would place a cap on development of lots. She stated that it is her legal opinion that absolute caps may be subject to legal challenge, absent special legislation authorizing the Town to impose such a restriction.

There is a possibility of the Town applying for special legislation that would authorize it to impose such a restriction (on dwelling size). That process would involve a vote at Town Meeting to seek the special legislation.

Floor Area Ratio (FAR) is an accepted means of controlling building size. Ms. Laughman then reviewed an example of how the proposed by-law could be revised to reflect an FAR calculation. FAR is calculated by dividing the gross floor area of the building(s) by the total area of the lot.

This would achieve a sliding scale. For lots over 3 acres, you wouldn't have the same cap as for the lower level lots. A 5 acre lot would have 6,500 sq. ft. cap, so you could put in additional tiers of FAR, so you would have a 4 acre FAR and a 5 acre FAR, for instance.

FAR is not the only way the Planning Board could address bulk. Maximum height, set backs, yard size, open space, parking and building coverage requirements. There could also be regulations based on the size of dwellings in the neighborhood.

Other regulatory options could be to create a Historic District pursuant to G.L. c.40C which grants authority to a Historical Commission to review architectural features subject to public view; to create Special Permit review standards in ZBL Section 30.8 (A) to guide ZBA review of applications to alter or extend nonconforming structures; or to create Design Standards relating to architectural features and character of the neighborhood to be considered in Site Plan Approval proceedings.

The special permit review could set a standard but it would not be enforceable. It could create a community standard to point to and encourage residents to honor.

Planning Board input

Mr. Herridge: The draft that our subcommittee sent to Counsel included the concern that the revision be made as simple as possible. We would like for people to understand at Town Meeting what size house they can build. We feel that using FAR would be difficult to understand. Mr. Herridge then asked if Counsel thought that doing what either Wellfleet or Chilmark has done would not stand up. Counsel stated that FAR would not be subject to legal challenge, because it does not set an absolute cap on floor size, but is based on a sliding scale using a ratio proportional to lot size. Mr. Herridge asked what the best way is to measure floor size. Counsel: the exterior of the building, exempting basements, unfinished attics, etc., being clear in what constitutes living space.

Mr. Boleyn stated that simplicity of language is key, to prevent misunderstandings.

Counsel: floor area ratio can be presented in an easy way. Just multiply your lot size by ratio and you get square footage. It is actually simple to apply. Examples could be provided to illustrate FAR for residents to consider at Town Meeting.

Mr. Riemer stated that in the 2011 Town Meeting warrant, it said that Truro is the only community in Barnstable County without a zoning by-law restricting building size or lot coverage in the Seashore. Mr. Riemer said that he thinks that the National Seashore in Truro is especially in need of such regulation. He then read a definition of FAR from Wikipedia saying that it was a poor predictor of physical form and is not an effective way to conserve and protect neighborhood character. He asked Counsel if she thought FAR was a good standard to use for Truro.

Counsel: My comments regarding FAR are primarily in response to the proposed citizen by-law revision capping building size, in order to achieve the same result in a legally defensible way. It could be part of a comprehensive zoning scheme, that also draws on maximum height and set backs and other zoning concerns.

Mr. Riemer: Another way to limit building size would be through the Board of Health regarding nitrogen loading calculations, especially with smaller lots.

Ms. Tobia stated that she likes the way proposed amendments would tie the Seashore District to the vision the Town has. Question: We could set design standards, but we would be limited in imposing them. Can you elaborate on this?

Counsel—Design standards encourage the community to come together to create goals and agree on values regarding how they want their town to be developed. It can be a community peer pressure process. However, there is no enforcement capacity.

Ms. Tobia asked about creating a historic district. What are the hurdles involved in doing that?

Counsel— The statutory process in doing this is set out in the 40C procedure: it goes to Town Meeting, you lay out your district, develop regulations, enforced by your historic district commission, and approvals would be needed for architectural features that are visible to the public. There is no jurisdiction on things not seen by the public. It's an overlay district, it becomes a general by-law, incorporated into Zoning. And there's an appeal process.

Ms. Tobia asked if the historic commission is an elected body? Counsel replied that it is usually an appointed body. She can check the statute to see if it would be an option to make it an elected body. Members usually have some expertise in the area if possible. You would need to create a new historic commission separate from any current historic commission you currently have.

Mr. Riemer referred to a letter dated October 11, 2012, to the Chilmark Planning Board from a citizen of Wellfleet. He cites several land court decisions regarding protecting and preserving the various values of Martha's Vineyard.

Counsel stated that she is familiar with many of these cases; they are standard in many zoning cases, concerned with protecting public health, safety and welfare. The FAR's that she calculated, based on the Truro community proposal, would be seen as very restrictive, she said. Imposing these restrictive limitations might be permissible, however, given the specific concerns cited regarding the Truro Seashore District.

Check Steinman, Chair of Historic Commission, and member of the Planning Board subcommittee that helped draft the referenced proposal. He would like to talk about the next steps. He feels that the FAR calculation is complicated and the average citizen will have difficulty with it. The resulting caps could be considered arbitrary, since they are based on arbitrary numbers to begin with. He would like to compare what Chilmark has done in setting a 3,500 sq ft limit. You can go over it by 250 sq ft per acre or under it by 250 sq ft. per acre depending on your lot size. The proposal that Counsel referred to is one that was created last November. We have since added higher limits subject to ZBA approvals. We should create more clarity with regard to floor area in combination with building height. He spoke of the intentions of the subcommittee to protect the Seashore and maintain its character. He mentioned affordable housing as an issue. He also had a question about site plan review.

John Marksbury is a member of "Save Truro Seashore," and has served on the subcommittee for over a year. He asked for clarification about precedent. FAR was developed in urban areas, with much smaller property sizes. We should take the question of confusion by the public seriously. There were several attempts along these lines going back to 1990, but the proposals were shot down as too complicated to understand. Wellfleet, prior to Chilmark, passed a straight forward by-law. Mr. Marksbury stated that in 2009 the Wellfleet by-law was given the Attorney General's seal of approval. He wants us to be cautious about the use of FAR.

Joanne Barkin, resident of Truro, expressed concern and said it is very worrisome that Counsel is pre-empting a more straight forward approach to the problem; that the Town might be sued, and that hasn't happened in Wellfleet or Chilmark. There is a growing concern in US and in New England to protect our resources. We would be moving with history to adopt the kind of approach Wellfleet and Chilmark have taken. She wants to emphasize that it is a National Park we are protecting.

Ann Greenbaum said that she is almost more confused than before. Two issues were mixed together. She wanted more clarification on how FAR would avoid setting an absolute cap on building size. If we don't need to use FAR, we might make it simpler. What are the community engagement pieces going forward? The more everyone knows, the more informed we can all be before we vote.

Joan Holt spoke to simplicity, reminding everyone that at Town Meeting, when something is supported by some people, another group often says that it is confusing, leading to the measure being voted down. We should consider the Town's people and provide a simple proposal.

Maureen Cronin had a question about procedures having to do with the building permit process, reflecting on the comments about Town values and peer pressure. She wanted to know if the building permit process includes a conveyance of town values.

Ms. Ridley replied that when someone goes to the Building Commissioner, he will determine if there are any Zoning violations. If so, then you can't get a building permit until you go through site plan review with the Planning Board. Site plan review is not discretionary, but one has to go through it before going back to the Commissioner. It is a rigorous process and does have teeth, lots of teeth, in terms of resource protection, safety and other criteria.

Design guidelines: if some are included in the by-law, does that give the Planning Board more leverage in ensuring that they are adhered to?

Counsel stated that design guidelines are something that the Planning Board reviews, and you can impose conditions. Those conditions can sometimes make the project unviable in some way and then it may not get completed. She didn't mean to suggest that site plans are not important or required. Site plan is not State Law, it is a local set of standards, so the zoning act does not apply in the same way. Non-discretionary means that the Planning Board cannot deny the site plan, but can condition. Conditions have to be met or challenged. You have to get your site plan approval before you can get your building permit.

John Freedman asked if other towns have imposed design standards and what their experience has been with them?

Bob Weinstein, property owner in the Seashore, wants to protect the Seashore as everyone else does. He expressed concerns about materials recently handed out to the public that include photographs of homes that are not located in Truro. Previous house size restrictions were defeated in Town Meeting because they would have applied to the whole town of Truro, not because they were confusing. The Seashore district is the most protected district in this community. He would like to work with the Planning Board to continue to protect it, and he agrees with Counsel that we should do something which is legally defensible. If we want to keep Truro rural, the effort should be to protect the whole community.

Susan Howe said that the people talking about simplicity are on the right track. This is a wonderful challenge to come up with something that can be passed at Town Meeting. But first let's deal with the Seashore, and then the deal with the rest of the town.

Counsel responded to some of the questions. Historic district will be concerned with architectural features; Zoning would deal with size. In communities that have by-laws that have not been subjected to challenge, because they have the approval of the Attorney General doesn't mean they wouldn't be struck down. She stated that she has presented the most conservative plan. The Planning Board should consider what risks they want to expose the Town to, knowing

that a legal challenge could be expensive. With respect to simplicity, the Planning Board could create an educational campaign prior to town meeting. FAR is probably not the only way to achieve your goals, but it could pass legal muster.

Ms. Ridley stated that the Board doesn't need to make a decision tonight, but might want to consider a future meeting, possibly more information gathering, before providing guidance to Counsel so they can proceed. Other questions can be followed up on through emailing Ms. Ridley.

Section 40.2 Affordable Accessible Dwelling Units (AADU)

Ms. Ridley stated that about a year ago in a joint meeting of the Planning Board and the ZBA, a conversation began about making the by-law more accessible and increasing its use. Until this past year there hadn't been a special permit issued for an AADU. There were efforts made to suggest amendments, based on some work that was done by the Cape Cod Commission, however we were up against a time line, without adequate time for community discussion and input. The Planning Board has asserted that looking at this by-law is a goal and a priority. A workable approach might be to identify some of the discussion topics and look at those as policy and procedural questions, find consensus on the Board through discussion and with public input, and ultimately ask Counsel to draft a new by-law.

Ms. Tobia agreed that we should go through each bullet point on the materials provided in the packet.

- Whether AADU should be by special permit use in all districts in town, except the Seashore District. There is a model that the Cape Cod Commission is developing that says that an Accessory Dwelling Unit should be permitted in all districts in town if you meet zoning dimensional standards. An applicant would apply to the Building Commissioner for a Building Permit, or to the ZBA if needed

Mr. Herridge stated that he would like to retain some control through the special permit. Mr. Boleyn is also in favor of the special permit. Mr. Riemer is in favor of special permit.

Ms. Ridley stated that in the current by-laws, it is permissible to have a habitable studio, but the lack of cooking and sanitary facilities are the difference. If you were to proceed with a permitted use, design standards and other requirements could be included in the by-law.

Ms. Tobia asked her fellow Board members for their thoughts on splitting the issue into existing units and those requesting permits to build a new structure. She suggested giving the existing units an easier path. Ms. Tobia also brought up the issue of amnesty for existing units.

Mr. Herridge agreed that providing an easier path for built space would be a good idea. Mr. Boleyn and Mr. Riemer agreed. Ms. Ridley asked for clarification; would this be for units with no remodeling needed? Ms. Tobia said that it would be for structures that are already in place,

but may need some work to make them livable for year round rentals. Mr. Boleyn brought up the fact that some of these studios do not have electricity or plumbing, which would be mandatory in order for it to be permitted. Ms. Ridley said that then retrofitting the unit might be fast tracked and amnesty provided.

- Should the option be available in all districts? Currently the AADU is not available in the Seashore District. Mr. Herridge, Mr. Boleyn and Mr. Riemer responded that they did not think AADU should be permitted in the Seashore. Ms. Tobia said she thought that no new AADU construction should be permitted in the Seashore, but existing structures might be considered.
- Should affordability documentation be required? When the Cape Cod Commission worked on this issue last time, the affordability requirement was taken out. The logic being that the units by nature of their size, would be market affordable. The documentation requirements are quite strenuous for the applicant and the tenant. However, if the applicant wanted to take advantage of the tax abatement, they would need to complete the affordability documentation, be certified and deed restrict their property. Board members were all in favor of the option to take out the affordability requirement.
- Should the AADU by-law include design standards? You could include guidance regarding community character? There has been a concern that every house in town might become a duplex. To further to address that type of concern, the unit would have a separate entrance, and would not look like an equivalent dwelling to the primary dwelling. Board members were in agreement that design standards would be useful. The current by-law does not include lot coverage maximum. This could be a requirement. Mr. Herridge said he thought the by-law should be as simple as possible, so he doesn't see lot coverage maximum as a necessity. Mr. Boleyn agreed. Mr. Riemer said he thought they should look at this more closely and discuss it further.

Ms. Ridley then discussed occupancy requirements in order to avoid situations where these units are created for seasonal usage. The Board agreed that units should be occupied year round. Enforcement would need to be addressed. Annual inspections are required currently. No other units are inspected annually. It would be important to work with the health agent and the building commissioner to determine what is sensible and not onerous for the applicant or putting a strain on town resources. This may need to be addressed in the draft by-law.

Public comment

Joan Holt asked if we need more housing. She worries about a construction boom that doesn't solve the problem. She is not in favor of dropping the requirement that units be affordable. The documentation should be simplified, but she doesn't think the market would keep them affordable.

Jay Coburn, Truro selectman, spoke as resident and as executive director of the Community Development Partnership. He has expertise on affordable housing issues. He discussed why he thought a special permit was not necessary and is cumbersome for applicants. He reiterated what

others had said about making this process as easy as possible. Mr. Coburn talked about the fact that someone building an accessory unit would not be able to make back their investment renting out year round as someone could who builds something and rents it seasonally. Should the units be available for all districts? He thinks an analysis would be helpful. How many lots in town would it be possible to build an accessory unit on? While he is in favor of preserving and protecting the Seashore, this is where there are lots where accessory units might actually be able to be built. It might also be where there is capacity regarding septic issues. He argued that not very many people are going to build a 1,400 square foot unit, and the impact on the Seashore would be low, if allowed. On the issue of affordability and the town getting to the 10% mark, he thinks we should not worry about that. Given the few lots with public water, no developer is going to do a big project. We have very few large lots in town with public water. Affordable housing is for families who are making 80% of median income. But the greatest need is for families who are making too much money to qualify for affordable housing but can't afford the median price for a home in Truro. If units are created that are not deed restricted, but we require that they be rented year round, market forces will keep them at a \$1200-1600 per month range. (An average cost of a unit to be built in Barnstable County is \$300,000. Rents can't begin to repay that investment. So the building of affordable housing is not going to be market driven.) And most homeowners are not going to do the deed restriction. Rental registration can take care of the year round issue. Provincetown has been finding that annual inspections are not needed and have gone to inspections every three years. He also mentioned the tiny house movement, 2 - 400 sq ft., He said he would hate to see us exclude that as an option. Making it easier for existing properties to be converted is a good idea.

Chuck Steinmann stated that he also would like us to make it easier for existing houses to be converted. The issue of enforcement should to be addressed. Maybe beach permits could be involved in overseeing the issue of year round rentals.

John Marksbury talked about the sustainability of our community. He had a caution regarding the size of accessory units, that they be proportional to the main dwelling. He doesn't see this addressing the question of how we provide apartments for caregivers who are needed for our elderly residents, 24/7, a daughter, a son or family member. How does this fit in the conversation?

Katherine Black spoke about her experience in applying for and receiving the AADU permit. She gave an update on her project, a garage with apartment on the second floor, which is close to completion. She stated that the biggest barrier that may keep others from applying for the permit is the Title V regulation that one must have a separate tank or two compartment tank for each family household on a property. She will be spending \$3,000 to add a tank in series and possibly more expense for the dirt work. Most people understand the rule regarding number of bedrooms for a given septic field. Most do not know that they would need a separate septic tank if they had an additional household (even if it is only one person) on their property. She also talked about the deed restriction that would devalue her property. She is planning to do the deed restriction, but the idea that it is in perpetuity is concerning. She also mentioned that an apartment, different

from a studio or extra separate bedroom, must have two entrances. She asked if in building the apartment as the AADU, would she have the option to live in the apartment and rent out her three bedroom house affordably. (Answer: yes.)

John Marksbury asked about whether there is a tax abatement related to the deed restriction. Ms. Ridley answered, yes. He suggested using the deed restriction on Conservation land as a model — where you get a tax abatement and the recognition of a gift to the Federal government. Ms. Ridely said there was special legislation to the State already in place for this tax abatement. Chuck Steinman spoke about time-limited deed restrictions, so maybe the AADU deed restriction does not have to be in perpetuity.

Ms. Black reported that she looked into what tax abatement she might receive and spoke with Ms. Palmer and the tax assessor. She was told that her increase in property tax due to the new structure she is building— increasing the value of her property— would be about the same amount as her tax abatement, approximately \$1,000. She is not sure that \$1,000 per year is worth a deed restriction in perpetuity.

Ms. Tobia then called on Ms. Laughman for any further comments. From a legal standpoint, regarding amnesty and imposing design standards, those homeowners who wish to convert units will have to comply with building codes and Board of Health regulations. You are not going to be able to grant amnesty through Zoning for buildings that are not in compliance. That might limit the number of people who could qualify for amnesty. Also minimum size of 400 sq ft. may not comply with building code. You can have a deed restriction that is not in perpetuity. We would have to look at the legislation to see how that gets applied.

Mr. Coburn had a question for counsel: are there mechanisms to require year round rental or leases? Counsel stated that yes, we have drafted by-laws for short term leases. There are registry requirements that can be imposed.

Mr. Riemer asked Counsel to explain inclusionary zoning and how it can lead us toward more affordable housing being developed in town. Counsel confirmed that Truro does not have inclusionary zoning at this time. Inclusionary zoning is a mechanism where certain incentives are created to require large scale developments to include a percentage of affordable units.

Mr. Boleyn moved to adjourn, Mr. Herridge seconded, so voted 4-0.

Respectively submitted,



Katherine Black

