

# Edgartown Planning Board - Meeting Minutes

Tuesday, October 20, 2020, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, October 20, 2020, 5:30 PM.

Prior to the call to order, Mr. Finn noted the following:

*The meeting is being audio and video recorded, and attendees participating by video conference, in accordance with Chapter 53 of the Acts of 2020.*

*All supporting materials have been provided to the members of this body and are available on a publicly accessible internet website. Any member of the public is able to access the site, using the instructions included in the Meeting Agenda.*

*The public is encouraged to follow along using the posted agenda.*

*Deviations from the agenda, if any, will be noted.*

## **SITE VISITS**

A site visit to 32 Ocean View Avenue was conducted at about 9:30 AM. No deliberation was conducted.

## **CALL TO ORDER / ROLL CALL**

Mr. McCourt called the meeting to order at 5:31 PM, and called the roll:

MASCOLO: Present

MORRISON: Present

MORGAN: Present

SEARLE: Present

CISEK: Present

MCCOURT: Present

A quorum was declared.

The board reserved the right to address unscheduled agenda items out of order, for the convenience of the Board and applicants.

## **5:30 PM DEPARTMENT REPORT**

### **REVIEW OF PAYROLL**

Payroll sheet for the period ending October 13, 2020 was made available to board members for review.

### **REVIEW OF MINUTES**

The minutes of August 4, August 11, August 18, September 8, September 15 and October 6 were presented.

It was MOVED by Morgan SECONDED by Morrison

*To approve the minutes of August 4, 2020, August 11, 2020, August 18, 2020, September 8 2002 and September 15, 2020 as presented.*

ROLL CALL VOTE:

MASCOLO: YES

MORRISON: YES

MORGAN: YES

SEARLE: YES

CISEK: YES

MCCOURT: YES

## **ZONING BYLAW – SCHEDULE DISCUSSION**

Mr. Finn requested that the agenda for November 17 be dedicated to discussion on proposed revisions to the

Zoning Bylaw. If the board agrees, all interested parties will be invited to attend.

Mr. Finn noted that the zoning discussion would likely include a review of the Cape Pogue DCPC, review of regulations for assisted living facilities, and other matters.

The Board concurred. Mr. Finn noted that the agenda would be left reserved to the one topic.

**OTHER BUSINESS**

An email from Pat Harris, Tisbury Planning Board Assistant, was read to the board (included as addendum to these minutes). After some discussion, the board agreed to respond to the letter by –

- Individually considering topics that would be appropriate for the regional discussion; each member should prioritize those topics, and be prepared to present their ‘top two’ topics for consideration.
- Discuss those topics at the regular meeting on November 10, in order to develop a unified ‘consensus’ list of discussion topics to present to the mediator.

The AIPB meeting would not likely happen prior to the first of the New Year.

Mr Finn apprised the board on the recent technical training conducted with members of the Master Plan Steering Committee, and relayed the enthusiasm of the members of the Committee to get started on the work of examining and revising the Master Plan.

**SCHEDULED BUSINESS**

**5:40 PM – REQUEST TO RENAME A ROAD – SUTTON COURT TO STEVEN-JOHN COURT (5:45 PM)**

Mr. Finn noted that a request to rename a road had been submitted by Adelaide, Steve and Erica Milkovich, residents / of Sutton Court.

There was a brief presentation of the request. Ms. Erica Milkovich spoke on behalf of the family, noting that in September, Steven-John Milkovich passed away at a young age due to a tragic illness. As a tribute to him, she requested that “Sutton Court” be changed to “Steven-John Court”. Ms. Milkovich thanked the Planning Board for taking up the request.

It was MOVED by Morrison SECONDED by Morgan

*To approve the request to rename Sutton Court as Steven-John Court.*

ROLL CALL VOTE:

MASCOLO: YES

MORRISON: YES

MORGAN: YES

SEARLE: YES

CISEK: YES

MCCOURT: YES

5:51 PM

**5:45 PM - PUBLIC HEARING - REPETITIVE PETITION: 32 OCEAN VIEW AVENUE REALTY TRUST, 32 OCEAN VIEW AVE (29-137) – POOL CABANA**

*Prior to conducting business, Mr. Scott Morgan recused himself, citing a personal conflict that he felt would affect his ability to rule objectively on the matter. Mr. James Cisek acted on the matter as a voting member. (5:57 PM)*

**At 5:52 PM, the Board took up a request to submit a Repetitive Petition** to construct a pool cabana on an existing garage on a pre-existing non-conforming lot in the Inland Zone of the Coastal District. The request was submitted by William “Chuck” Sullivan, Sullivan and Associates Architects, on behalf of 32 Ocean View Avenue Realty Trust, the owner of the property. The request was submitted in accordance with Section 16 of Chapter 40A of the General Laws.

*Present for the applicant: William “Chuck” Sullivan, Sullivan and Associates Architects, Doug Hoehn, SBH, Inc.*

Mr. McCourt referred to a written statement which was read into the record. Mr. McCourt noted that the board’s review would be limited to an examination of the newly proposed plan, a comparison to the previously denied plan, and a determination as to whether the changes between the two constituted a substantive change that address the reasons for the original denial.

**PRESENTATION / FINDINGS OF FACT:**

The board received a list of changes prepared by the applicant’s Architect:

<b>Proposed Pool House/Garage (2019)</b>	<b>Proposed Cabana (2020)</b>
1. The 2019 structure was proposed to be multi-use structure, serving as a pool cabana, a detached bedroom, and a garage.	1. The 2020 structure would be a pool cabana and a storage room. The garage was previously approved by the Planning Board in September 2019, and has been built.
2. The 2019 structure would contain: a bedroom, 3/4 bath, a full laundry, a separate room housing a 'wet-bar' with bar-sink, sitting area with wall-mounted TV, an outside 1/2 bath, an outside shower.	2. The 2020 structure would contain a pool cabana with a 1/2 bath, and the pool storage area.
3. Proposed Pool House would add approximately 642 Square Feet of 'Conditioned' space, or floor area.	3. Proposed structure would add approximately 475 Square Feet of 'Conditioned' space, or floor area.
4. Area designated as 'detached bedroom' would be approximately 372 square feet. Area for pool cabana would be approximately 242 square feet. And a lav that is 30 square feet	4. Area for pool cabana would be approximately 341 square feet. Area designated as 'Pool Storage' would be approximately 134 square feet. There is no detached bedroom or outside bathroom.
5. Cabana and detached bedroom share a common wall but are not directly accessible to each other.	5. Cabana and pool storage area are not directly accessible to each other.
6. Outside dimensions of perimeter of the 2019 Pool House is 22'-6" x 32', for a total footprint of about 712 square feet.	6. Outside dimensions of the perimeter of the 2020 proposed structure is 21'-0" x 26', for a total footprint of about 544 square feet.
7. Ridge height of 2019 structure is 21' 5-1/2 inches above mean natural grade.	7. Ridge height of 2020 structure is 20' – 6 ¾" above mean natural grade.
8. Ridge height of 2019 structure is 12' -6 ½" above the floor level.	8. Ridge height of 2020 structure is 11' – 8" above the floor level.

Plans of both the original (denied) plan and the resubmitted plan were reviewed, and the changes on the submitted list were verified and confirmed. Also:

- The board noted that the outdoor shower was not included in the square footage calculations.
- The overall reduction in square footage would be about 168 square feet (a reduction of about 26%)
- The outdoor shower is not included in the square footage calculations.
- The ‘bar’ defining how much change is required was discussed.
- The board found that the original, separate detached bedroom was removed.
- The reasons cited for each member’s original vote were reviewed.
- Reade Milne (Edgartown Building Inspector) advised that the structure ‘falls squarely in the realm of a pool house’.

- Matt Poole (Edgartown Board of Health Agent) advised that the pool cabana qualifies as a detached bedroom, but that the septic capacity on the lot is sufficient to support the use.
- The outside pool-side shower as constructed will not be attached to the structure.

The Board notes that Mr. Bo Reily, Ms. Carolyn Reily and Mr. Tim Moriarty (legal counsel for the Reily’s) were present for the meeting. Mr. Moriarty requested that the board review his letter (dated 10/20/2020, included in project file). At the direction of Mr. McCourt, Mr. Finn summarized the principal points of Mr. Moriarty’s letter, which

- cited the Reily’s objection to the repetitive appeal,
- noted that its success could undermine the original decision of the board to deny,
- asserted that the changes constitute ‘de minimis changes to the original rejected plan’, and
- the petition should be denied by the board for these reasons.

Mr. McCourt reminded the board that the benefits and detriments of the proposal were not at issue at the present time; rather, the board should be examining whether or not the repetitive petition should be allowed.

**DECISION**

It was MOVED by Mascolo SECONDED by Morrison

*To allow the repetitive petition, as the changes to the plan (the reduction in square footage, the reduction in ridge height, the removal of the separate detached bedroom, the removal of the second bathroom, and the removal of the kitchenette / wet-bar) sufficiently addressed the causes for which the original proposal was denied.*

MORRISON: YEA  
SEARLE: YEA

ROLL CALL VOTE:  
MASCOLO: YEA  
CISEK: NAY  
MCCOURT: YEA  
(6:24 PM)

It was MOVED by Mascolo SECONDED by Morrison

*To consent to the reapplication*

MORRISON: YEA  
SEARLE: YEA

ROLL CALL VOTE:  
MASCOLO: YEA  
CISEK: NAY  
MCCOURT: YEA  
(6:25 PM)

Mr. Finn noted that the special permit application is had been received and would be processed.

**OTHER BUSINESS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE**

No other business was presented.

**ADJOURN**

It was MOVED by Mascolo, SECONDED by Searle

*To Adjourn.*

APPROVED BY UNANIMOUS CONSENT.  
(6:26 PM)

Respectfully Submitted,

Douglas Finn  
Planning Board Assistant

**ADDENDA**

- 1: Letter from Pat Harris, on behalf of the Tisbury Planning Board, dated 10/15/2020
- 2: Announcement from Chairman Mike McCourt, regarding repetitive petition hearing (undated)

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**Tisbury Planning Board re: All Island Planning Board Retreat**

1 message

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**Pat Harris** <pharris@tisburyma.gov>  
To: "dfinn@edgartown-ma.us" <dfinn@edgartown-ma.us>

Thu, Oct 15, 2020 at 1:52 PM

Doug

The Tisbury Planning Board understands your board's concerns about putting the time into discussion of appropriate topics. The purpose of the retreat is not to deal with specific issues but to discuss a structure for regular communication with all boards, to establish a format for that communication, the frequency of meetings, the length of those meetings and to get to know each other for the purpose of working together more regularly.

It will be appropriate to have each Planning Board prepare a list of topics they would like to discuss, present it to all boards in advance of the retreat, and determine how many of the issues are common among the towns. I anticipate that as a result of this meeting, the 'Boards' will prioritize topics for future meetings.

To date, there is not a structure in place for the 'Boards' to communicate regularly, and though the various 'Boards' serve their towns independently, their decisions can impact the entire Island. The 'Boards' need each other and need to find a way to work together efficiently.

Elaine Miller in previous emails recommended and chose an independent facilitator to guarantee that the tenor remains neutral, and that the focus of the discussions remain on mutual goals. This will be establish in advance. I understood the facilitator was planning to speak with each Planning Board independently to discuss each town's goals and objectives. This same person was going to integrate the information, prepare the agenda, structure the meeting (s) and keep us on track to move forward productively.

We've been receiving responses from the other towns and hope to have some conclusive commitment by the end of the month.

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Patricia V. Harris, Planning Assistant

***Tisbury Planning Board***

*Town Hall Annex*

Box 602 – [66 High Point Lane](#)

[Vineyard Haven MA 02568](#)

(Phone) 508-696-4270

## **STATEMENT FROM THE CHAIRMAN:**

This appeal process is being conducted in accordance with Section 16 of Chapter 40A of the General Law.

This is not a public hearing. The Planning Board Chairman will permit the applicant to briefly present the new proposal. However, the chairman has decided that there no other public participation will be permitted.

At the direction and discretion of Chairman McCourt, The Board will NOT be discussing the specific merits of this new proposal, nor any other development on the lot.

By way of reminder, the Planning Board Decision from August 20, 2019 denied a proposal for a two-story garage, pool-house and detached bedroom. The decision cited the opinion of two members that

***the size of the lot, combined with the use of the proposed detached structure as a detached bedroom, pool cabana and garage, would be too much development on the lot, and would cause disruption to the neighborhood.***

This review will be a comparison of the original plan to the new plan, identifying the differences between the two, and whether those differences might address the reason for the original denial.

For the appeal to be successful, the board must conduct two separate votes:

First: it must determine **whether or not there are specific and material changes to the plan that address the conditions cited in our denial of the previous plan.** A favorable vote by at least four of five members is required to pass. The Planning Board must cite those specific differences, and they must be included in the record of proceedings. The changes cited should comprise a substantive change to the previous proposal.

If that vote succeeds, the board must determine **whether or not to consent to the reapplication.** A favorable vote by at least four of five members is required for that vote to pass.

Board Members should not review the new application on its merits. Whether or not the proposal meets the criteria in the Zoning Bylaw is not relevant at this stage. The Board must only determine **whether the collective changes – small or large, substantive or cosmetic – alter the conditions causing the unfavorable vote of the board.**