

Edgartown Planning Board - Meeting Minutes

Tuesday, November 17, 2020, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, November 17, 2020, 5:30 PM.

The meeting was audio and video recorded. Attendees participated by video conference, in accordance with Chapter 53 of the Acts of 2020. All supporting materials were provided to the members of this body and made available on a publicly accessible internet website. Members of the public were able to access the site, using the instructions included in the Meeting Agenda. The public was encouraged to follow along using the posted agenda. Deviations from the agenda, if any, were noted.

SITE VISITS

No site visits were scheduled.

CALL TO ORDER / ROLL CALL

Mr. McCourt called the meeting to order at 5:30 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.

SCHEDULED BUSINESS

5:30 PM - PUBLIC HEARING (continued) – SP (Coastal District): Bernard Chiu, 26 Orr Ln (20B-76.3)

Application to construct a pool in the inland zone of the coastal district.

Applicant: Doug Hoehn, dhoehn@sbhinc.net

The Board continued a public hearing from Tuesday, November 10, 2020, at the request of Doug Hoehn, SBH, Inc., on behalf of Bernard Chiu (Owner) to construct a pool in the inland zone of the coastal district.

This application is made in accordance with Section 5.3 of the Edgartown Zoning Bylaw. The property is located at 26 Orr Ln, Assr. Pcl. 20B-76.3. Copies of the application are available in the Planning Office for public review.

Present for the applicant: Mr. Doug Hoehn, SBH, Inc.; Mr. Sasha Robinson White, RW Architects.

The public hearing was continued at 5:32 PM.

The board reviewed revised plans.

Findings

- The pool terrace has been expanded to the north and south of the pool.
- A 4-foot retaining wall will enclose the terrace on north and south sides of the pool.
- There will be three gates in the fence, each lockable.
- The pool equipment enclosure will be on the north/west side of the house, with a flip-up top, and a removable front.

- The pool equipment enclosure will provide sound abatement, and will be ventilated.
- The pool equipment is proposed to be further away from the neighbor's house than originally proposed.
- Exterior gates do not have to be alarmed – only doors from homes.
- The grade will be built up along the north east of the patio with fill.
- No one was present to speak in favor of or opposition to the application.
- No letters had been received.

There being no further comments, the chair closed the public hearing at 5:37 PM.

Decision

There being no further discussion, it was **MOVED** by Mascolo, **SECONDED** by Searle

To approve the application as presented, with standard conditions for swimming pools, as follows
CONDITIONS:

This special permit is not in effect until the applicant has filed a certified copy of the decision or certificate with the registry of deeds. A copy of same shall be provided to the Planning Board and Building Inspector. Any modifications to the plan shall require approval from the SPGA.

The construction shall conform to the application considered and approved by the Planning Board, including all plans and documents submitted in support of same, and approved by the Planning Board.

This special permit shall run with the land.

Prior to issuance of a building permit, the above specified plans will be compared to the construction documents submitted to the Building Inspector for verification and correspondence. If the Building Inspector determines that there are significant differences, the applicant shall be required to apply for a Modification to this Special Permit.

Substantial construction activity must commence no later than one year from the date of final action by the Planning Board.

No construction activity will take place earlier than 7:30 AM or later than 7:30 PM, or on Sunday, or from June 15 through September 15.

STANDARD CONDITIONS FOR SWIMMING POOLS

USE and SAFETY

1. *Only the residents of the dwelling and their guests shall use the pool.*
2. *The pool shall be surrounded by a barrier, securing access to the pool in accordance with local and state Building and Health codes.*
3. *A ring buoy shall be provided with a secured safety line of a length adequate to reach all areas of the pool.*
4. *All pool equipment shall be located inside a pool house or enclosed structure for noise abatement to unless specifically waived by the SPGA.*

WATER

5. *Pools supplied by well water shall be filled prior to June 15 or after September 15.*
6. *Pool water shall be treated with a non-chlorinated treatment system only. Pools shall not be drained within 48 hours of any chemical treatment.*
7. *Draining or adjustment of water level shall be in accordance with Department of Health or Conservation Commission regulations, and shall not be accomplished through disposal of water into a public or private way, and shall not be allowed to cause surface ponding or flooding.*

LIGHTING and ENERGY

8. Outdoor lighting is limited to that required by building code, and shall be fully shielded, and directed downward. Mercury vapor lighting and bug zappers are prohibited.

9. Heated pools are permitted with the recommendation the heat source is solar, geothermal or other alternative energy source.

COMPLIANCE

10. The project shall comply with any applicable Conservation Commission Order of Conditions, Massachusetts Department of Environmental Protection Wetlands Order of Conditions, Board of Health regulations, and Building Code.

ROLL CALL VOTE:

MASCOLO: YES

MORRISON: YES

MORGAN: YES

SEARLE: YES

CISEK: YES

MCCOURT: YES

APPROVED.

(5:38 PM)

GENERAL DISCUSSION / PRESENTATIONS

Edgartown Zoning Bylaw - Consideration of proposed changes

At about 5:40 PM, the board engaged in a conversation about potential changes to the Edgartown Zoning Bylaw.

Assisted Living Changes (proposed by MV Hospital).

Mr. Ed Olivier, representing the MV Hospital, spoke to a proposal to change the zoning bylaw that would allow for review and permitting of Senior Residential Developments.

Peter Freeman, Ed Pesce, Alana Quirk, Renee Lohman, (Principal, Navigator Elder Homes of New England).

Mr. Olivier noted that their concept was to 'put into place the proper zoning for the project', as proposed. An existing zoning bylaw allows for assisted housing up to a certain size or capacity. The intent is not to change the bylaw, but to 'expand it, so we can have buildings of a certain size'. DPH regulation compliance was also cited as a driver to the overall design.

There was some discussion related to the design of the proposed facility. A minimum lot size would be required. Feedback from the board was requested, as to whether an amendment was the determined path, or if there was a way to review the project under existing guidelines.

Mr. Finn noted that, through conversations with the Building Inspector and ZBA Administrator, there may be a pathway enabling review of the proposed project without requiring a change to the Zoning Bylaw. The Planned Development District was reviewed as a potential means to review the project.

There was some general discussion regarding infrastructure connections and the process to date.

Mr. Morgan: Who looks at the process that we would use to review this project?

Mr. Finn recommended referring the matter to Town Counsel, and to get an opinion on the applicability of the PDD.

Ms. Milne noted that Section 17.5.B gives the Planning Board the authority to waive specific requirements of the PDD, if it is deemed to be in the best interests of the Town. Ms. Milne also cautioned the board against rewriting zoning regulations in order to 'allow' or 'approve' a given proposal.

Ms. Morrison: has the hospital considered a 40B application? Mr. Olivier: We have; however, we lose control over the proposed staff housing by going through the 40B process.

Mr. Finn: The provisions of the Cluster Subdivision Special Permit would allow for a slightly increased

density, if the Cluster Subdivision Special Permit rules are employed through the review of the project.

Mr. McCourt: is an increase in traffic anticipated? Mr. Pesce: We have done a traffic study, pre-reviewing the results of same with Mike Mauro of the MV Commission. Our results show an insignificant or minimal impact to existing traffic. There are recommendations for improvements to the existing infrastructure (road, bus stops, etc.) that will be considered.

Mr. McCourt: The project sounds on its face like a benefit to the island, with a lot of work done so far – and more to be done.

Mr. Searle: Is this still anticipated to be 130 beds? Mr. Olivier: Yes.

Mr. Cisek: Will the developer be responsible for the cost of the new sewer line? require pumping stations?

Mr. Olivier: Generally, yes; we're still working through the details.

Mr. McCourt: Next steps? Mr. Finn: the Hospital's legal counsel should coordinate with Town counsel in order to confirm that the PDD is the correct avenue to review this project. Provided Town's counsel approves: we can move forward.

Mr. Morgan: I agree with Reade Milne: changing zoning to suit a specific project is something to be avoided.

There was other conversation related to details disconnected from the zoning bylaw proposal.

There being no other comments, Mr. Finn noted that he would forward a request on behalf of the Board to Town's Counsel to confirm that the PDD is the appropriate mechanism for review.

The Board thanked the representatives from the MV Hospital for their participants.

MV Commission Update

Mr. Adam Turner (Executive Director, MV Commission), offered an update related to MV Commission activities, including an update on the Hob Nob Inn proposal, and the areas of focus related to the proposal; updating the energy policy of the commission; updates to testing and other procedures related to nitrogen and water quality; updates to a plan to address preparedness for a potential wildfire event in the State Forest, and other topics.

Mr. McCourt: For many years, the expectation has been that the Town and the MVC would work collaboratively. As we move forward, we would like to prepare projects prior to referring, in order to better streamline review of a project before the MVC. What can we do to achieve that?

Mr. Turner expressed the benefit of communication between entities as a means to that end.

There was extensive discussion related to concerns of the board, and ways to better communicate the needs of the Town before the commission, particularly in relation to future changes to the DRI Checklist.

Zoning Bylaw Changes

Cape Pogue DCPC

Mr. Finn noted that the Marine Advisory Committee has considered some minor changes to the zoning bylaw related to the Cape Pogue DCPC. Present: Bruce McIntosh, Skip Tomassian of the Marine Advisory Committee ("MAC"), and Paul Bagnall (Shellfish Constable).

Mr. McIntosh noted that the summer saw significant increase in water use on Cape Pogue, and the MAC is concerned with the impact to the natural environment due to overuse. While no changes were implemented this summer, the MAC now suggests that an anchorage moratorium be put into place for one year, allowing time to reform the Cape Pogue Advisory Committee, and consider changes to the regulations governing that area.

Mr. Tomassian noted that Charlie Blair, Harbormaster, is very concerned that an accident could result due to the massive increase in use on Cape Pogue. Further, kite boarders have taken to using kite boarding on Cape

Pogue, due to being restricted from Katama, and the inner harbor area.

Mr. McCourt: is enforcement the problem? Or regulation? Mr. Tomassian: It's a combination of both. We want to protect the public rights to use the area; however, public safety, and protection of the natural resources in the area must come first.

There was some discussion related to the historically noted value of the area.

Mr. McIntosh noted that the Zoning Bylaw describes an advisory committee to advise on regulations, and to oversee enforcement of regulations in the area. Mr. McIntosh reiterated the desire for a one-year moratorium on anchoring in the pond.

Mr. Morgan: did you want to consider a headway speed limit? Mr. McIntosh: we believe that a no-wake buoy at the entrance of the pond has resolved concerns related to vessel speed.

Mr. Morgan also noted that improper disposal of human waste in the pond was detrimental to the pond; further, the increase in traffic does not represent a relative benefit – financial or otherwise – to the Town. It actually could be detrimental, given the potential for damage to eel grass, and the scallop beds in the pond.

There was some discussion related to enforcement. The potential to use Coast Guard, and Edgartown Police to help enforce regulations.

Mr. Bagnall noted that an action plan was in place in the Spring; that plan was put on hold by the Selectmen due to Covid-19. He also noted that the Cape was a significant resource for scalloping.

The provisions of the Cape Pogue DCPC Zoning Bylaw were reviewed, and the composition of the advisory committee was discussed.

Mr. Tomassian noted that the Marine Advisory Committee is advisory in nature. The MAC is the first line of defense, but must rely on other enforcement agents.

Mr. Tomassian noted that at least one position, if not two, should remain on the committee for resident members. Mr. Tomassian noted that the Harbormaster, and the Edgartown Police should be represented.

Mr. Morgan noted that the Planning Board should expedite the request to place a one-year moratorium on anchoring in Cape Pogue, in order to dispense notice of same.

Mr. McCourt: What do we need to do to make this happen? Mr. Tomassian recommended some changes to the Cape Pogue Advisory Committee.

Mr. Tomassian: The harbormaster has requested a one-year moratorium be placed as soon as possible as an emergency measure. Mr. McIntosh concurred, and asked that the Planning Board endorse the one-year moratorium.

Mr. Finn noted that the Cape Pogue Advisory Committee can make recommendations on proposed regulations, but is not entirely clear on who implements those regulations. Mr. Finn suggested that, at the least, the Planning Board can publicly recommend and support a one-year moratorium on anchoring in Cape Pogue, propose revised composition for the Advisory Committee, and support development of a set of comprehensive regulations for adoption.

It was MOVED by Morrison, SECONDED by Searle

To recommend and support a moratorium on anchoring in Cape Pogue for a period of one year, or until revised regulations regarding use and activity in the area are approved, whichever comes sooner.

MASCOLO: YES
MORGAN: YES
CISEK: YES

ROLL CALL VOTE:
MORRISON: YES
SEARLE: YES
MCCOURT: YES
APPROVED. (7:02 PM)

It was suggested that the Harbormaster would be best positioned to notify local boatyards, marinas, and other interested parties.

It was suggested that the Harbormaster be invited to provide the Planning Board with updates on the area on a regular basis. Further, it was suggested that the Harbormaster would be best positioned to suggest a penalty for violation of the moratorium on anchoring in the Cape.

Mr. Finn also suggested that the Harbormaster cooperatively enforce the regulations of the Bylaw with the building inspector.

Mr. McCourt thanked the Marine Advisory Committee for their participation, and noted that the discussion will continue at a later meeting.

Other Recommended Zoning Bylaw Changes

Ms. Reade Milne presented some background on her experience related to interpretation of the Zoning Bylaw, and posited a number of options for clarification and/or change to the Bylaw, including:

- Frontage – Building Inspector requests a definition.
- Front Lot Line – Building Inspector requests a definition.
- Pool House – Building Inspector requests definition for a pool house
- Accessory Building or Use – Building Inspector requests separate definitions for accessory building and accessory use.
- Mean Natural Grade – Building Inspector requests revision of the definition of Mean Natural Grade.
- Gross Floor Area – Building Inspector and others have suggested that only UNFINISHED basements not be counted towards gross floor area.
- Setback / Setback Area – Building Inspector and Planning Administrator recommend that definitions for ‘setback’ and ‘setback area’ be added.

Other Areas of Focus

Pool Equipment Required to be Soundproofed

Mr. Searle asked the board to consider a potential requirement that all pool equipment be enclosed with sound-abating material. Mr. Ted Rosbeck noted that noise emissions varies depending on the equipment, and that a noise bylaw might better address the concern.

There was extensive discussion related to what equipment might be included, what equipment could or could not be affected or regulated, and other related matters.

Mr. McCourt noted that the board had discussed this matter at several times in the past, and suggested that the board commit to making necessary changes.

The Definition and Use of Setback Areas (Section 1.4)

Ms. Milne has requested clarification as to what is allowable in setback areas.

Permitted Uses – Clarification regarding existing dwellings (section 8.4.A.8)

Building Inspector has requested clarification as to allowed actions for existing non-conforming structures.

Clarify language regarding Height of buildings; elevated decks and porches. (Section 10.1.C.1)

Building Inspector has requested clarification related to measurement of structure height measured against Mean Natural Grade.

Allow Small Structures By Right on Nonconforming Lots. (Section 10.1.G)

Mr. Finn recommended that small ‘utility’ (small, single-story, non-habitable) structures be allowed by right on non-conforming lots.

Simplify Review Process of “Accessory Apartments” (Section 10.3.D)

The ZBA has recommended changes to “Accessory Apartment” language, streamlining the application process (eliminating regulation requiring sequential application for HDC and ZBA approvals)

OTHER BUSINESS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE

Mr. McCourt noted that the 59 North Street tower site had been cleaned up significantly, resolving concerns that he had shared at a previous meeting.

ADJOURN

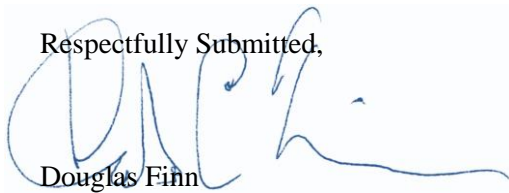
It was MOVED by Mascolo, SECONDED by Searle

To Adjourn.

APPROVED BY UNANIMOUS CONSENT.

(7:33 PM)

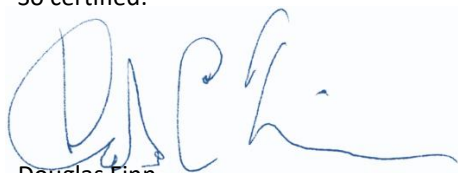
Respectfully Submitted,



Douglas Finn
Planning Board Assistant

APPROVED AT A REGULARLY SCHEDULED MEETING on DECEMBER 15, 2020.

So certified:



Douglas Finn
Planning Board Assistant