

# Edgartown Planning Board - Meeting Minutes

Tuesday, December 8, 2020, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, December 8, 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 5:31 PM, and called the roll:

MASCOLO: Present	MORRISON: Present
MORGAN: Absent	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.

## **ADMINISTRATIVE**

Mr. Finn asked for direction on a number of administrative matters:

### **Appointment to CIPC Committee –**

Mr. Finn noted that the Planning Board needed to appoint a member to the CIPC. It was **MOVED** by McCourt, **SECONDED** by Searle

*To appoint Lucy Morrison as the Planning Board representative to the CIPC.*

	VOTED:
MASCOLO: Yes	MORRISON: Yes
MORGAN: Absent	SEARLE: Yes
CISEK: Yes	MCCOURT: Yes

Mr. Finn reminded members of the MV Commission Meeting upcoming, and the agenda items to be addressed.

Mr. Finn also noted that the board would need to hold a public hearing to change a condition relative to a special permit issued to 41 South Water Street, in order to allow approval for a recent Special Permit granted to 31 South Water Street. Board consented.

Mr. Finn finally noted a proposed change of use for a property at the Post Office Square from a (limited) food service to a retail store does not necessarily require a Special Permit, but asked for the board's position. There was some discussion and deliberation. An informal vote was taken (4 in favor, 1 opposed), determining that a new special permit review should be required. The minority opinion noted that a lesser impactful use should not require a new review.

## **PROPOSED CHANGES TO EDGARTOWN ZONING BYLAW**

Mr. Finn made a presentation to summarize the proposed changes to the zoning bylaw.

Mr. Finn outlined the process of Zoning Bylaw Review

- December, 2020: Planning Board determines Zoning Bylaw changes.
- Before January 4, 2021: PB submits changes (as Warrant Articles) to BOS
- January 5, 2021: BOS includes Zoning Bylaw Articles on Warrant
- January, 2021: PB holds public hearing on Proposed Articles
- March 15, 2021: Last day to withdraw ATM warrant Articles
- April 13, 2021: Annual Town Meeting. Amendments permitted
- May 14, 2021: Town Meeting Votes Certified and sent to AG
- After May 14, 2021: Zoning Bylaw Changes approved by AG.

Mr. Finn noted that change generally fall into one of three Categories

1. Clarification – adding detail that helps to improve understanding
2. Alignment – making zoning bylaws align with current practice
3. Additions – new sections that conditionally permit certain uses

### **Clarification**

Three different types of clarification included:

- Add new definitions to clarify intent
- Change existing definitions to clarify intent
- Change existing sections to clarify intent

Mr. Finn recommended striking the following definition:

~~ACCESSORY BUILDING OR USE: A use that is subordinate in purpose to, and serves a principal building or principle use and shall include tennis courts, swimming pools or like structures.~~

...to be replaced by two separate definitions, nearly identical.

**ACCESSORY STRUCTURE: a structure that is customarily incidental and subordinate to a principal structure on a lot.**

**ACCESSORY USE: A use that is customarily incidental and subordinate to a principal use on a lot.**

**FRONT LOT LINE: The lot line that abuts a street and contains the principal entrance to the property.**

**FRONTAGE: The portion of the front lot line directly abutting the street.**

After some discussion related to the presentation process, and the use of setback, it was **MOVED** by Morrison, **SECONDED** by Searle

*To include the changes as proposed in a warrant article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES  
(5:50 PM)

*At 5:51 PM, the meeting was paused to allow a member to resolve technical problems with the video connection.*

*Meeting resumed at 5:54 PM*

### **Pool House / Cabana**

Mr Finn noted that the current zoning does not define “pool house” or “cabana”. This results in confusion as to whether a proposed structure is a pool house, detached bedroom, or guest house; the following definition was proposed:

**POOL HOUSE/CABANA: A structure that is intended to be accessory to a swimming pool. A pool house shall be no more than 400 square feet of habitable space, shall be limited to a single room and ½ bath, shall not be conditioned space, and shall not contain facilities for cooking. Storage areas for pool equipment shall not be included in area calculations, and shall not be accessed from the inside of the pool house.**

There was some discussion relative to the limit on ‘conditioned’ space; the conversion of a pool-house / cabana to some other use, and the distinction between an in-ground swimming pool and portable bathing appliances such as hot-tubs. After some deliberation, it was MOVED by Morgan, SECONDED by Morrison

*To approve the definition as written, and to add it to a Warrant Article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES  
6:01 PM.

Mr. Finn noted that the definition for “Mean Natural Grade” in the Zoning Bylaw is inaccurate, does not comply with standard practice and recommended the following revision:

**MEAN NATURAL GRADE:** The natural grade, **of undisturbed land** relative to a given structure **or portion of a given structure**. The mean natural grade shall be calculated by ~~measuring~~ **as the average of** the natural elevation at the four (4) most remote corners of a structure **or portion of a structure**, as determined by the Building Inspector ~~to the height of the highest point of the structure, and dividing the aggregate number of these heights by four (4).~~

There was some exploration of the subject and how it might be put into practice.

Mr. Finn also noted that the current definition for “Gross Floor Area” excludes basement areas regardless of whether it was finished out. Gross floor area calculations are used in the B1 and B2 zones, the Surface Water District, and Accessory Apartments. Mr. Finn recommended amended as follows:

**GROSS FLOOR AREA:** The sum of the horizontal areas of all stories of a building, or several buildings, as measured from the exterior face of exterior walls, or from the center line of a party wall separating two buildings on the same lot. Gross Floor Area for a single lot shall include garages, sheds, gazebos, enclosed porches, screen porches, enclosed decks, guest buildings, and other accessory buildings; Gross Floor Area shall not include **unfinished** basements, crawl spaces, attics, open porches, or open decks.

There was some discussion related to whether attic spaces would be counted.

After deliberation, it was MOVED by Mascolo, SECONDED by Morrison

*To approve the definitions as written, and to add it to a Warrant Article.*

VOTED:

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

MORRISON: YES  
SEARLE: YES  
MCCOURT: YES

(6:07 PM).

Mr. Finn noted that some changes as proposed were intended to align the zoning bylaw in order to concur with established practice, with the original intent, or to improve services to applicants.

**Setback**

Mr. Finn noted that the Edgartown Zoning Bylaw does not currently define “setback”. Generally, the term “Setback” refers to the distance between a fixed feature (e.g., a lot line, a river, a road) and a structure.

**SETBACK: A certain distance between a lot line and the line of a building or projection thereof, measured on a line perpendicular to the lot line.**

There was some discussion related to how a setback might be applied

Mr. Finn noted that the use of setback areas has been consistently applied, but had not been condified into the zoning bylaw. The proposed change would align the zoning bylaw with past practice:

**FRONTAGE: All lots created after April 9, 1985 will have a minimum frontage of 50 feet on a street. No part of a structure, including projections from a structure, eaves, gutters and cornices, shall be located or constructed closer than the minimum Setback as defined herein. Mechanical equipment that generates noise (such as generators, air-conditioners, pool equipment, etc.) may be placed closer than the minimum Setback, but no closer than five feet to any lot line, provided that the Building Inspector determines that adequate measures have been taken to attenuate and noise from such equipment. In accordance with Section 6 of Chapter 40A of the General Laws, structures intended to provide assistance to individuals with physical impairments such as ramps and chair lifts are exempt from Setback restrictions.**

After some deliberation, it was MOVED by Searle, SECONDED by Morrison

*To approve the proposed changes as written, and to add to a Warrant Article.*

VOTED:

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

MORRISON: YES  
SEARLE: YES  
MCCOURT: YES

(6:14 PM).

**Height of Buildings and Exception**

Mr. Finn noted that the Zoning Bylaw, section 10.1.C.1, does not properly refer to the defined term “Mean Natural Grade”, and proposed a change:

The Board of Appeals may grant a Special Permit for an exception from these requirements upon its determination that an increase in height will not create undesirable conditions caused by overshadowing, or loss of privacy, and that utility and protective services will be adequate. Height shall be measured as the vertical distance from ~~the mean level of ground in its natural state prior to construction,~~ **Mean Natural Grade** to the highest point of the roof.

No comments were noted. It was MOVED by Searle, SECONDED by Morrison

*To approve the proposed change as written, and to add to a Warrant Article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES

(6:16 PM).

Ms. Reade Milne joined the meeting at 6:16 PM, and briefly noted the current practice related to window wells and bulkheads in setback areas.

**Cape Pogue Advisory Committee Composition and Cape Pogue Enforcement Authority.**

Mr. Finn noted that the Edgartown Zoning Bylaw, Section 5.4.F provides for

“A Cape Pogue DCPC Advisory Committee shall be established to foster cooperation in management of public and private lands in the District, to advise the Planning Board on applications for Special Permits, and to propose wildlife management and recreation guidelines.”

Mr. Finn noted that the Marine Advisory Committee had suggested some changes to the committee in order to provide for more local representation, to improve the committee ability to meet as needed, and provide recommendations regarding zoning rules and local regulations affecting the District.

Changes to the composition of the committee were recommended, by amending Zoning Bylaw section 5.4.F.1 “Cape Pogue DCPC Advisory Committee” as follows:

1. Membership shall include one representative from each of the following organizations, appointed by that organization:

- a. Edgartown Conservation Commission
  - b. Edgartown Board of Health
  - c. ~~Mass. Department of Environmental Management~~  
**Edgartown Planning Board**
  - d. ~~Mass. Department of Fisheries, Wildlife, and Environmental Law Enforcement~~  
**Edgartown Marine Advisory Committee**
  - e. ~~The Trustees of Reservations Membership~~  
**Edgartown Harbormaster**
  - f. The Trustees of Reservations Staff
  - g. ~~County of Dukes County~~  
**Edgartown Police Department**
  - h. Martha's Vineyard Commission
  - i. Cape Pogue Property Owner (appointed by the  
~~Chappaquiddick Island Association~~  
**Edgartown Board of Selectmen**)
  - j. ~~Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation Society, and Vineyard Open Land Foundation)~~ **Edgartown Shellfish Constable**
- Additional members may be appointed by the Planning Board.**

There was some discussion and deliberation. Mr. Morgan noted that the changes represented a good start.

It was MOVED by Searle, SECONDED by Morrison

*To approve the proposed change as written, and to add to a Warrant Article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES  
(6:22 PM).

Mr. Finn noted that he zoning bylaw does not expressly define an enforcement agent for the Cape Pogue DCPC, and proposed:

**5.4.G Enforcement**

**For purposes of this section, the office of the Edgartown Harbormaster shall coordinate with the office of the Edgartown Building Inspector and the Edgartown Police Department, in order to jointly oversee, administer and enforce all special permits and regulations issued or enacted under this section.**

It was MOVED by Searle, SECONDED by Morrison

*To approve the proposed change as written, and to add to a Warrant Article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES  
(6:25 PM).

**Faster Permitting of Accessory Apartments**

Mr. Finn noted that the Zoning Bylaw, Section 10.3.D. (“Accessory Apartments”) requires applicants to complete the Historic District Commission process before even applying for the special permit form the ZBA, and includes language that is no longer applicable, and can be removed for clarity of interpretation, and recommended removing sections 10.3.d.3.F, and 10.3.d.3.i.

~~10.3.d.3.f. Historic District: Any proposed accessory apartment in the Historic District must first receive a Certificate of Appropriateness from the Historic District committee before applying to the Zoning Board of Appeals for consideration for a special permit.~~

~~10.3.d.3.i. Pre-existing: Accessory apartments in existence prior to the adoption of this section may have application made for a special permit without prejudice by April 1, 1998 and may be given special permits provided they meet all of the above requirements.~~

It was MOVED by Mascolo, SECONDED by Morrison

*To approve the proposed change as written, and to add to a Warrant Article.*

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

VOTED:  
MORRISON: YES  
SEARLE: YES  
MCCOURT: YES  
(6:27 PM).

**Additions:**

Mr. Finn described two proposed additions to the Zoning Bylaw that will regulate certain structures:

-- “Utility” structures that meet certain criteria  
will be permitted by right on lots of at least 6,500 square feet.

-- Senior Residential Developments that meet certain criteria

may be conditionally permitted by the Planning Board.

**Utility Structures**

Mr. Finn noted that certain Utility Structures, such as small garages and tool / garden sheds almost never represent a burden on a lot, or on abutters; however, on non-conforming lots, they still require review by the ZBA or the Planning Board before they can receive an ‘exemption’, or a ‘de minimis determination’. This takes time and expense. Mr. Finn recommended allowing these structures by right, provided they meet certain criteria, and adding the following language to Section 10.1.G (“Non Conforming Structures and Uses”) by adding Section 7, as follows:

**On any non-conforming residential lot with an area of at least at least 6,500 square feet, minor structures accessory to a dwelling shall be permitted by right only as follows:**

**One structure per lot that is 100 square feet or less, and designed for utility or storage.**

**One structure per lot that is 220 square feet or less, is designed for storage of a single motor vehicle, has a single garage door, and not more than one ‘walk-out’ door with an opening of 36 inches or less.**

**Structures permitted under this section shall not have more than one level, shall not be more than ten feet in height from Mean Natural Grade, shall not be served by heating, air conditioning, potable water service, or wastewater service, and shall otherwise conform to all statutory and Bylaw requirements.**

**Structures on non-conforming lots exceeding these criteria shall require a special permit from the appropriate Special Permit Granting Authority.**

It was MOVED by Morrison, SECONDED by Searle

*To approve the proposed change as written, and to add to a Warrant Article.*

VOTED:

MASCOLO: YES  
MORGAN: ABSENT  
CISEK: YES

MORRISON: YES  
SEARLE: YES  
MCCOURT: YES

(6:32 PM).

**Senior Residential Developments**

Mr. Finn noted that he had been working with other parties to produce language that would regulate Senior Residential Developments; providing for developments that present a variety of housing types, settings, and residential services to meet the needs of people as they age, and people with disabilities.

Mr. Finn described the general tenor of the proposal as follows:

**STRUCTURES**

A Senior Residential Development may be composed any combination of the following housing STRUCTURES: Cottage Dwellings, Two-Family Dwellings, Townhouse Dwellings, A Continuing Care Retirement Facility, A Skilled Nursing Facility

**USES**

A Senior Residential Development may provide any combination of the following SERVICES: Independent Living, Assisted Living, Physical Rehabilitation Services, Memory Care Services, Skilled Nursing Services

**SCOPE**

A Senior Residential Development may also incorporate certain non-residential services for the benefit of their residents, including: Personal Services Retail, up to a maximum of 2,500 sq. ft., a Medical office or clinic, a Community or Senior Center, an Adult day care center, Staff apartments, or Conservation /

Agricultural uses; also Accessory uses for residents, staff and guests (such as common dining or laundry facilities, or indoor or outdoor recreation facilities).

**CRITERIA**

- STRUCTURES shall be limited in units per acre, depending on the type; building coverage shall not exceed 35% of the area of the lot.
- STRUCTURES shall be set back at least 50 feet from side lot lines, and at least 100 feet back from front lot lines.
- STRUCTURE DESIGN shall use colors and materials generally corresponding to the natural setting of the project site and Edgartown; Density, height and design shall complement the neighborhood.
- STRUCTURE DESIGN must meet certain criteria for access, egress, transportation, parking, energy, conservation, recreation, etc.

In judging the OVERALL DEVELOPMENT, the Planning Board MUST find that...

- The proposal will not adversely affect the neighborhood or the Town relative to...
- the characteristics of the site relative to the proposal
- the social, economic, or community needs served by the proposal;
- the traffic flow and safety of the site
- the adequacy of utilities and other public services
- the qualities of the natural environment;
- The proposal could not be improved in regard to...
  - building form and location, egress, grading, and other physical elements;
  - public transit, pedestrian, bicycle, or vehicular access and safety;
  - visual intrusion of parking as viewed from public ways or abutting premises;
  - the volume of cut or fill, potential for erosion, removal of existing trees
  - provision of access for fire and other service equipment.
- and that the proposal meets the purposes, requirements, and development standards of the Zoning Bylaw, and is consistent with the goals of the Edgartown Master Plan

Mr. Finn noted that the lanaguage was still in development, and subject to review, but asked for a motion to approve the general direciton and criteria as presented.

It was MOVED by Searle, SECONDED by Mascolo

*To approve the general direction of the warrant article as presented, and to authorize Mr. Finn to continue to develop final language.*

VOTED:

MASCOLO: YES

MORRISON: YES

MORGAN: ABSENT

SEARLE: YES

CISEK: YES

MCCOURT: YES

(6:44 PM).

Mr. Ed Olivier thanked the board for their efforts in considering a zoning bylaw to govern Senior Residential Developments.



**Other business not reasonably anticipated 48 hours in advance**

No other business was presented.

Mr. Finn reminded the board of upcoming projects, and upcoming meetings. There was some discussion relative to the Stop & Shop landscape plan.

**ADJOURN**

It was MOVED by Searle, SECONDED by Mascolo

*To Adjourn.*

APPROVED BY UNANIMOUS CONSENT.

(6:48 PM)

Respectfully Submitted,

Douglas Finn  
Planning Board Assistant