

Edgartown Planning Board - Meeting Minutes

Tuesday, October 19, 2021, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, October 19, 2021, 5:30 PM.

The meeting was audio and video recorded. Attendees participated by video conference, in accordance with Chapter 20 of the Acts of 2021. 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

Ms. Morrison called the meeting to order at 5:32 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 – Administrative

Review of Minutes – October 5, 2021

Ms. Morrison noted that the minutes from October 5 were still under review, and tabled action to the next regular meeting.

Master Planning Steering Committee

Mr. Finn provided an update on the activities of the Master Plan Steering Committee, and encouraged members to follow the process.

The Master Plan Steering Committee schedule was reviewed.

Board members were encouraged to forward their own planning priorities to the Master Plan Steering Committee as they saw fit.

5:35 PM – Zoning Bylaw Discussion

The board reviewed revised proposals for additions to the Edgartown Zoning Bylaw:

Clarification of Coastal District Exemption

Mr. Finn noted that the original intent for the exemption to the Coastal District DCPC was to allow for the protection of the Salt Pond and dunes adjacent to the Lighthouse, while still exempting the buildable areas of the residential properties along North Water Street and Starbuck Neck Road.

Mr. Finn described the existing language as inaccurate, as it appears to include the residences on the east side

of Starbuck Neck Road, which is not consistent with the historic understanding of the exempted area. Mr. Finn noted that the proposed language was intended to more clearly define the exempted area in accordance with historic precedent.

CURRENT

The land bounded on the south by Atwood Circle extended to Edgartown Harbor; on the north and east by the walkway to the lighthouse and North Water Street to Starbuck Neck Road and Gaines Way to where it intersects the ten (10) foot contour line.

PROPOSED

The land bounded on the south by the centerline of Atwood Circle and Beach Street extended to Edgartown Harbor; and bounded on the north and east by a line starting at the Lighthouse, then roughly north along a walkway from the lighthouse to Water Street, then roughly north-east along the centerline of North Water Street about ninety feet, then roughly north, along the centerline of a 10' way / pedestrian easement known as North Water Street Extension about 960 feet to Fuller Street, then roughly south west along the centerline of Fuller Street about 185 feet to Gaines Way, then roughly north along the centerline of Gaines Way about 275 feet to the intersection of Gaines Way and the ten (10) foot contour line.

After review, it was MOVED by McCourt, SECONDED

To approve the proposed change to the DCPC exemption description, and to forward the proposed language to the MV Commission for review and ratification.

VOTED:

MASCOLO: Yes

MORRISON: Yes

MORGAN: Yes

SEARLE: Yes

CISEK: Yes

MCCOURT: Yes

VOTED: 5, 0, 0. (5:45 PM)

Establish the Planning Board as the SPGA where multiple permits are required

The board considered an addition to the Zoning Bylaw, which would clarify the Planning Board as the SPGA, in cases where two SPGAs were required to act on a matter.

17.7.D Notwithstanding any other section of this Zoning Bylaw, where proposed development on any lot requires a Special Permit under this Zoning Bylaw from more than one Special Permit Granting Authority, the Planning Board shall be the Special Permit Granting Authority for all proposed development on the lot.

The board generally concurred with the intent of the change.

Clarification of "Roof Pitch"

The board considered the following language, intended to clarify the terms "flat" and "pitched" roofs, and to unify the zoning bylaw where it regulates roof heights based on pitch. The language would provide clarity

only, and not introduce a substantive change to current practice or understanding.

PROPOSED ARTICLE: to AMEND the Edgartown Zoning Bylaw, Section 1.3, "Definitions", by ADDING the following definitions in appropriate alphabetical order:

Roof, Flat: For the purposes of this Zoning Bylaw, any section of roof with a slope not more than three inches over twelve inches (a "three pitch", or a 3:12 pitch).

Roof, Pitched: For the purposes of this Zoning Bylaw, any section of a roof with a slope or pitch greater than three inches over twelve inches (a "three pitch" or a 3:12 pitch).

and to further amend the Edgartown Zoning Bylaw, section 2.4.E, "Height of Structures", as follows:

Maximum height of structures as measured vertically from the Mean Natural Grade in the same area of the proposed structure shall be as follows: 26 feet for a **Pitched Roof** *pitched roof* and 18 feet for a **Flat Roof** *flat or shed roof with a slope of 4 in 12 or less*.

The Zoning Board of Appeals may grant a Special Permit to increase the height of a structure to a maximum of 32 feet in specific instances. In considering a Special Permit the Zoning Board of Appeals shall require the applicant to:

- (1) Provide evidence that *a structure higher than 26 feet for a pitch roof and 18 feet for a flat or shed roof with a slope of 4 in 12 or less* **the structure as proposed** would not extend above the average height of vegetation, as accurately measured on site, that would exist around the structure after construction; and
- (2) demonstrate graphically that the finished structure exposed by likely tree clearing would not be prominently visible from other public or private lands or water bodies.

and to further amend the Edgartown Zoning Bylaw, section 5.1.E.1 as follows:

Height of Structures: Maximum height of structures as measured vertically from the Mean Natural Grade level shall be as follows: 26 feet for a **Pitched Roof** *pitched roof* and 18 feet for a **Flat Roof** *flat or shed roof (which is a roof with a pitch of 1 in 4 or less)*. The Planning Board may grant a Special Permit to modify the height restrictions of the Coastal District, up to the maximum allowed in the underlying Zoning District, in specific instances, if it finds such modification consistent with the character of the neighborhood.

and to further amend the Edgartown Zoning Bylaw, section 5.2.A.3.c as follows:

c. Height of Structures

Except by Special Permit, the maximum height of structures as measured vertically from the Mean Natural Grade shall be **twenty-six feet for a Pitched Roof, and eighteen feet for a Flat Roof.** *as follows:*

- a. *26 feet for a pitched roof and 18 feet for a flat or shed roof (which is a roof with a pitch of 1 in 4 or less).*

And to further amend the Edgartown Zoning Bylaw, section 10.1.C.1 as follows:

10.1.C.1. Height of Buildings and Exception

The height of any structure created in any district shall not exceed thirty-two feet for a **Pitched Roof** *pitched roof* or twenty-four feet for a *flat roof* **Flat Roof**. *Any roof with less than a four inch pitch per foot will be considered a flat roof.* However, these dimensions may be exceeded by special permit so as to conform to the average height of existing principal buildings fronting on the same street or within 500 feet of the premises.

Edgartown Building Inspector Ms. Reade Milne was present, and noted her support for the change.

Tree Protection and Preservation

A proposed addition to the Zoning Bylaw was reviewed, which would provide some level of protection for trees within setback areas on any given lot.

PROPOSED_ARTICLE: To amend the Edgartown Zoning Bylaw, Section 1.3, by adding the following definitions in alphabetical order:

Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

Diameter at Breast Height (DBH): The diameter of a tree trunk four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Invasive Species: Any plant listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.

Protected Tree: Any existing tree with a DBH of four (4) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species of trees shall not be considered Protected Trees.

Tree Removal: Mechanical demolition of a living tree, or any act (1) that has caused a tree to die within the previous 12 months or (2) is likely to cause significant decline or death as determined by the Reviewing Agent.

Tree Save Area: The area surrounding all Protected Trees, sufficiently large to ensure the health of the Protected Tree(s), including their trunks, crowns, and root systems.

Tree Yard: The minimum front, side and rear yard setback area of a parcel in a residential zoning district as specified in the Edgartown Zoning Bylaw.

And further, by adding Section 10.1.K – "Tree Yard Protection and Preservation" as follows

1. **Intent and Purpose:** The intent of this section is to preserve and protect sizeable trees on portions of private property during significant demolition and/or development activity.

Trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, and provide natural privacy to neighbors.

2. For the purposes of this section, the Reviewing Agent shall be the Edgartown Building Inspector or her designee.
3. In any residential district, it is prohibited to remove a Protected Tree from the Tree Yard of a lot
 - a. Within 24 months of an application for division of a lot into two or more parcels, where the protected trees are within the Tree Yards of the resulting parcels.

- b. Within 12 months of an application for the demolition of, or a building permit for any structure with a footprint of 240 square feet or greater;
 - c. Within 12 months of construction of any building or structure on a vacant lot; or
 - d. Within 12 months of construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area by 50% or greater, excluding basements, open or screened porches and decks.
4. The requirements of this Tree Bylaw shall not apply to:
- a. Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR) and/or the Edgartown Wetlands Protection Bylaw;
 - b. Public Shade Trees pursuant to Chapter 87 of the General Laws;
 - c. Emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent and/or the Town Tree Warden;
 - d. Trees severely damaged as the direct result of a natural disaster, as determined by the Reviewing Agent and/or the Town Tree Warden;
 - e. Trees that are hazardous as determined in writing by a Certified Arborist, and confirmed by the Reviewing Agent and/or the Town Tree Warden;
 - f. Trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist, and confirmed by the Reviewing Agent and/or the Town Tree Warden;
 - g. Trees authorized for removal by the Special Permit Granting Authority after public notice and hearing conducted in accordance with Section 11 of Chapter 40A of the General Laws, and Section 17 of this Bylaw.
5. For the purposes of this section, the Planning Board shall be the Special Permit Granting Authority.

The board generally agreed that the proposal would provide some measure of protection to existing trees on existing lots. There was some discussion about enforcement of same, and that it would be incumbent on the Building Inspector's office to provide such enforcement.

Swimming Pools

The board considered a proposal to add a section to the Zoning Bylaw providing for expedited review and approval of swimming pools, even on non-conforming lots in some cases, when constructed to meet certain criteria.

PROPOSED: Section 10.1.K.: Swimming Pools

Edgartown believes that swimming pools are a reasonable way to enhance the enjoyment of a private residence, can add value to a property, and be a benefit to the residents and their guests.

For the purpose of this section, swimming pools that meet the requirements of this section shall be considered a minor accessory use and a non-habitable, minor accessory structure to a principal dwelling on a lot.

A self-contained hot tub, when placed at ground level on a platform or pad with a footprint of less than 144 square feet, shall not constitute a structure, and shall be exempt from this section.

The following regulations shall apply to the construction and operation of all swimming pools:

1. Permitting and Enforcement: Notwithstanding any other section of this zoning bylaw, swimming pools shall be permitted on residential lots as follows:
 - a. in the R5 district, lots of at least 7,500 square feet (75% of minimum lot size)
 - b. in the R20 district, lots of at least 12,000 square feet (60% of minimum lot size)
 - c. in the R60 district, lots of at least 36,000 square feet (60% of minimum lot size)
 - d. in the R120 or RA120, lots of at least 60,000 square feet (50% of minimum lot size)
2. Special Permit Granting Authority / Building Permit: When required, Special Permits for swimming pools shall be issued by the Planning Board, and enforced by the Building Inspector. A building permit is always required for any swimming pool.
3. Public swimming pools: Swimming pools proposed for any lot in a business district, intended to serve transient residential facilities, or “shared pools” (pools intended for regular unlimited access by the occupants of more than two dwelling units), shall in all cases require a Special Permit.
4. Criteria for Swimming Pools: A proposal for a swimming pool shall not require a special permit if it adheres to the following criteria:
 - a. Placement: Swimming pools must be designed so that any required excavation is no closer than 12” to ground-water.
 - b. Setbacks: Notwithstanding any other section of this zoning bylaw, a swimming pool or any portion thereof may be placed 15 feet from any boundary line, but no closer. For the purposes of this section, a surface level ‘patio’ surrounding an in-ground pool shall not count towards this requirement.
 - c. Compliance with Other Regulations: Construction and operation of swimming pools must be in accordance with all applicable health and building codes and regulations.
 - d. Public Visibility: A swimming pool shall not be clearly visible from a public street or sidewalk. Fencing and/or vegetation at least four feet in height, when placed between the public way and the swimming pool, shall satisfy this requirement.
 - e. Side Lot Visibility: Screening designed to visually screen activity at and around the pool from abutters shall be required for all swimming pools constructed on a lot of less than one-half acre. Visual screening may consist of native non-invasive species, fencing, or other natural or constructed materials or devices. Visual screening must be maintained for the life of the pool.
 - f. Lighting: Submerged in-pool lights, and downward-facing or shielded path lights, are permissible. No other outdoor lighting is permitted, except where required by health or building codes or regulations.
 - g. Screening of Mechanical Equipment: Pool-related mechanical equipment (including pumps, filters, heaters, etc.) is a detriment to public views, a common and constant source of noise in residential areas, and can detract from the quiet enjoyment of private homes. Therefore, swimming pool mechanical equipment must be placed within a structure designed to minimize the sound of the equipment
 - h. Enclosing equipment inside an underground “vault”, inside an insulated building, or in the basement of an adjacent building, which may incorporate vents to or from such structures as necessary, shall satisfy the requirements of this section.
 1. ii. Enclosing the equipment within solid-panel fencing is acceptable, provided that sound levels from pool equipment are no greater than 40 decibels when measured at the closest point on the closest boundary line.

2. iii. The Building Inspector may waive the requirement for an enclosure if she determines that pool equipment will not reasonably be seen or heard at the closest point on the closest lot line.
 - i. Fire Protection:
3. In areas not served by hydrants connected to a pressurized municipal water supply, in-ground swimming pools can be used as a water source in case of fire emergency.
 - j. Application: This section shall apply to new construction or replacement of existing swimming pools.
4. ii. Exemption: This section shall not apply to pools proposed for a lot that is (a) served by the municipal water supply, or (b) less than 500 feet from a municipal water department hydrant, or (c) with a capacity of less than 5,000 gallons.
5. iii. Requirements:
 1. Swimming pools shall be connected to a non-pressurized draft hydrant ("Dry Hydrant"), constructed in accordance with all standards and specifications for pool access as delineated in FPA 1142: Standard on Water Supplies for Suburban and Rural Fire Fighting, as amended.
 2. The Dry Hydrant location shall be approved, with or without conditions, by the Fire Chief or his designee.
 - i. Drainage: an on-site dry-well shall be provided for seasonal draw-down of water.
 - i. Dry-wells shall be located down-gradient from any potable water source that is within 100 feet.
 - ii. Pool water shall not be disposed of onto the ground, onto any public way, or into the municipal sewerage system.
 - iii. Pool water chemical treatment must be discontinued for at least 72 hours prior to any draw-down of pool water.
 - k. Use and Safety: Swimming pools must comply with the requirements of Section 153 of the Code of Edgartown, "Swimming Pools", as adopted on April 12, 1994 Annual Town Meeting, Art. 28, and as further amended.
 5. Special Permits: If a proposal to construct a pool does not meet the criteria in Section 4: Criteria for Swimming Pools, the Special Permit Granting Authority may, after a public hearing held in accordance with Section 11 of Chapter 40A, issue a Special Permit to approve, to conditionally approve, or to deny the proposal.
 6. Criteria for Special Permits: A Special Permit for a Swimming Pool may be granted if the Special Permit Granting Authority finds that, as presented or conditioned, the proposal
 - i. will not reasonably create a significant detriment to the health, safety, or enjoyment of abutting residents (General human activity, conversation, and noise common to the use of a pool during daytime hours shall not constitute a detriment);
 - ii. will protect the privacy and quiet enjoyment of abutting residents to the greatest extent reasonably possible;
 - iii. will mitigate sources of constant mechanical noise to the greatest extent reasonably possible; and
 - iv. is largely consistent with the goals of this section, and the general intent of the Edgartown Zoning Bylaw, to the greatest extent reasonably possible.

There was some discussion relative to how disposal of pool water might affect the environment, an aquifer, surface land, or abutting property, and whether the chemicals used to treat pool water are harmful, and at what levels.

Ms. Milne noted that the building code, state law?) prohibits allowing stormwater runoff from one property to encroach upon another, or onto a public way.

Mr. Finn noted that he would request comment and input from bill burke (Wastewater), Matt Poole (Health), and Jane Varkonda (Conservation) regarding disposal of pool water, as well as industry professionals about pool treatment methods, chemicals used, and how pool water is best disposed.

Set Date and Time for Zoning Bylaw Public Hearing

After discussion, Ms. Morrison asked for consensus to push the proposed warrant articles to a public hearing. Without objection. A public hearing will be scheduled in December.

OTHER BUSINESS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE

Edgartown-West Tisbury Road

Mr. Searle noted his concerns about traffic on Edgartown-West Tisbury Road.

Mr. Finn noted a conversation with Adam Turner (MV Commission), he would be requesting that the Joint Transportation Commission would be requested to support a corridor study, in order to more comprehensively examine the issues of traffic, and possible solutions to traffic congestion.

Interviews for Planning Board Assistant

Mr. Finn noted that the plan was to have a sub-group (not a quorum of the board) review all applications, pick top candidates, and schedule interviews with those candidates.

Mr. Morgan noted that the entire board should be involved.

Mr. Finn noted that if the board were to screen the applicants, then the entire process must be conducted at a public meeting. The board generally agreed to the process, and agreed to act as a hiring committee of the whole.

ADJOURN

It was MOVED by Searle, SECONDED by McCourt

To Adjourn.

APPROVED BY UNANIMOUS CONSENT.

(6:36 PM)

Respectfully Submitted,

Douglas Finn
Planning Board Assistant