

Case No. 63-21

Application Filed: 16 November 2022

### RECORD OF PROCEEDINGS

I, Lisa C. Morrison, assistant to the Zoning Board of Appeals of the town of Edgartown, hereby certify that the following is a detailed record of proceedings pertaining to the request by 33 Watcha Path LLC (Goggins) d.b.a. Atlantic Pools for a special permit under section 2.1 B 6 of the zoning bylaw to operate a business in a residential district. The property is located at 33 Watcha Path (Assr. Pcl. 25-8) in the RA-120 Residential District.

1. On 16 November 2021 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. An advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on 19 November and 26 November 2021.
3. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters - owners of land adjacent to the subject property within 300-feet of the property lines - all as they appear on the most recent, applicable, certified tax list; and to all the proper town boards and departments.
4. At the applicant's request, the hearing was postponed to 23 February 2022. Notice of the postponement was advertised on 4 February and 12 February 2022. Notice of the hearing was sent to all abutters and posted in the Town Hall and on the town's website.

On Wednesday, 23 February 2022 at 4:00 p.m. the hearing was opened and held via Zoom. The following board members were in attendance: Pam Dolby – Acting Chairman, Nancy Whipple, Carol Grant, Tom Pierce, and Robin Bray – alternate. The applicants Mr. & Mrs. Goggins and their attorney, Robert Moriarty were present. Attorney for the abutters, Dan Larkosh, was also present as were several abutters. Chairman Dolby opened the meeting and explained the board's policies and procedures. She noted that the meeting is being held in compliance with both the Governor's order and the Open Meeting Law.

Doug Hoehn began the presentation saying that Mr. Goggins purchased the 3-acre property in 2017 and received a building permit from the previous building inspector in November of 2018. The permit was for a dwelling and a storage barn. Mr. Goggins met several times with Mr. Jason, the former building inspector, prior to purchasing the property to ensure that he would be able to use the property for his business. Mr. Jason determined that the use of the property for Mr. Goggin's business was allowed by right under the zoning bylaw.

Because of several issues raised by neighbors, the current building inspector, Reade Milne, determined that Mr. Goggins should apply for a special permit for a small business or industry in a residential neighborhood.

Mr. Hoehn commented that all structures on the property comply with zoning setbacks and height restrictions.

Mr. Moriarty reiterated that Mr. Goggins bought the property only after receiving permission from Mr. Jason to run his business as of right as described in section 2.1.A 4 b *use of the premises or building thereon in connection with his or her trade....* Mr. Moriarty said that he was not sure that Mr. Goggins needed a special permit under 10.2.A.2. He noted that under the law, an increase in the *volume* of business does not by itself constitute a change of use. Mr. Moriarty said that Mr. Goggins is operating the same business for which he received a permit from Mr. Jason in 2018. Regardless, Mr. Moriarty said that Mr. Goggins meets all the requirements of 10.2.A.2. There are only two employees working on the property: an administrative assistant and an office manager. The property provides sufficient off-street parking and all outdoor parking, storage, and service areas are screened from the public view. The property is heavily wooded and the barn is not visible to the public. No odor, dust, pollution, or fumes are generated by the business and there is no erosion of the soil or increased surface drainage.

Mr. Moriarty said that he understands that the traffic situation on Watcha Path is causing concern among some of Mr. Goggins' neighbors, but he said that the neighbors' demands that all commercial vehicle traffic cease and desist immediately is monumentally unfair. He said that last summer, in an attempt to cut down on road traffic, Mr. Goggins instructed his employees to keep the work vans at home. Mr. Moriarty said that Mr. Goggins has 6 service vans that come to the property perhaps 3 or 4 times a week in season to pick up supplies and materials.

Mr. Moriarty said that Watcha Path has been in a dilapidated state for some time. He noted that Mr. Goggins has offered to rehabilitate the road at his own expense and is making a good faith effort to cut down on vehicular traffic. He said that Mr. Goggins has tried to be a good neighbor and asked that the board grant his request to continue to operate his business.

Reade Milne, Building Inspector, said that she referred Mr. Goggins to the ZBA after several discussions with neighbors. Ms. Milne said that she was working as the assistant Building Inspector when Mr. Goggins received his building permit and remembers the conversations that Mr. Goggins had with Mr. Jason. She said that she does not believe that Mr. Goggins was operating with any ill intent. She said that the situation has been aggravated by additional commercial enterprises moving into the neighborhood. Ms. Milne said that she is in the process of bringing those businesses into compliance: Teles has found property in Vineyard Haven and will be moving his business soon. Miller's does not have permission to operate a commercial enterprise. Bill Bennett's solar array is permitted under a different section of zoning and is exempt. However, Bennett was allowing use of his property for storage by another commercial entity, who has since removed all his materials from the site. Ms. Milne said that she believed that Atlantic Pools could comply with the bylaw under certain conditions.

Chairman Dolby asked if there were any letters from town boards or departments. There were none. The assistant noted that there were letters of support from immediate abutters Elizabeth Harrington of 31 Underway Drive, Joann Hathaway & Kevin Selby of 27 Watcha Path, Nils G. Leaf of 23 Underway Drive, and Bill Bennett of 37, 39 & 41 Watcha Path. All wrote in support of Mr. Goggins' business and said they were good neighbors.

Letters of opposition were received from the following abutters and/or neighbors: Daniel Stiles of 14 Jennie Lane, Christopher & Karen Downing of 28 Jennie Lane, Betty-Jean & William Kennedy of 23 Jennie Lane, David & Cheryl Mance of 69 Watcha Path, Robert Green & Linda DeWitt of 77 Watcha Path, Steve & Ellie Parece of 9 Watcha Path, Geoffrey Patterson of 47 Watcha Path, CJ & Jim Rivard of 79 Watcha Path, Jonathan Spalter & Carrie Goux of 17 Jennie Lane, Anthony Stratakos of 34 Jennie Lane, and Homeowners of the Watcha Path Road Association. The major concern raised in all these letters was traffic.

Anthony Stratakos of 34 Jennie Lane said that certain statements made by Mr. Moriarty are simply not true. He said that Mr. Goggins has not operated in good faith and has not followed through on any of his promises. Mr. Stratakos said that the ostensible purpose of postponing the hearing back in December was so Mr. Goggins could work out a plan with his neighbors. He said that Mr. Goggins has not contacted a single person in the neighborhood.

Mr. Stratakos said that he is currently co-manager of the road association and has spent a good deal of his own time and money trying to maintain the road and broker an agreement with Mr. Goggins. He said that because of the extensive damage to the road from commercial vehicles the road is effectively unusable. He said that the condition of the road has gotten a lot worse in recent years, especially in the summer when Atlantic Pools vans make repeated round trips to pick up supplies.

He noted that most of the letters written by supporters of Mr. Goggins' business do not even use Watcha Path to access their properties. He said that Mr. Bennett refuses to pay for road maintenance. He said that he personally has paid over \$5000 in the last 15 months alone. [Mr. Stratakos temporarily loses internet – his remarks continue below.]

Dan Larkosh, attorney for Jonathan Spalter and Anthony Stratakos, said he believed that the application is flawed as nowhere does it mention Atlantic Pools, Inc., the real applicant. He said that Watcha Path is a fragile dirt road and a designated special way under 5.2 B 2. He said that, at the very least, both the Planning Board and the Martha's Vineyard Commission should be required to weigh in. Mr. Larkosh said that a business with commercial vehicular traffic is not appropriate on a designated Ancient Way. He said that he believed that the building inspector is correct in requiring Mr. Goggins to apply for a special permit, but said he is skeptical that Mr. Goggins would be able to comply with the requirements of a business in a residential district as outlined in the bylaw. He said that no one has any problem with Mr. Goggins using the barn as his office, it is the traffic that is the problem.

Jonathan Spalter said he chose his home because he believed it was a residential neighborhood accessed by a protected ancient way. He said that most of the residents have been good stewards of the neighborhood. He said that when he and his children ride their bikes they are put in danger by fleets of commercial vehicles using the road. He said that he has nothing against Mr. Goggins but he does not want to see Watcha Path become an industrial park. He said that Mr. Goggins and others must cease and desist from using the

ancient way as a commercial thoroughfare. He said that the town should pursue the process of creating an alternate access for these commercial vehicles.

Dave Mance says that he has lived on the road since 1998 and he now sees a disconnect between running a business and preserving an ancient way. He said Watcha Path is a primitive dirt road not intended to service commercial businesses. He said commercial vehicles cannot be safely accommodated on the road. He said that when riding his bike on the road, he now has to stop three or four times to allow a commercial vehicle to pass. He noted that because Watcha Path is designated as an ancient way, it cannot be widened.

Chris Downing said that he agrees with the comments of his neighbors and took issue with the idea that there was a precedent for allowing commercial businesses on the road. He said that Jim Blaine was a one-man, one-truck operation that is in no way comparable to the kind of businesses that are now being run on Watcha Path.

Shannon Gregory said that she understands that the island is small and that there is not a lot of areas for commercial businesses to operate. Regardless, she said she is not happy with the neighborhood transitioning from residential to commercial. She said that there are trucks on the road all day, every day – especially in the summer. She said that Mr. Goggins' use of the barn as an office is not problematic; it is the warehouse that causes problems because of the constant stream of traffic. She said that Watcha Path has reached a tipping point and the town cannot keep allowing businesses to set up shop.

Robert Green said that he believes he has lived on Watcha Path the longest: 44 years. He said that when he moved in, Watcha Path was basically a cart path. He said that up until about three years ago, he was able to maintain the road with the help of a few of his neighbors. He said that over the years, he has spent hours and hours grading the road. He said the entrance to the road off the Edgartown-West Tisbury Road has grown to 23-feet in order to allow trucks to access the road from West Tisbury.

He said that Mr. Goggins has promised to maintain the road, but has not followed through. He said that Mr. Goggins did make an effort recently to get in touch with him.

Mr. Green said that he has been a member of the Byways Committee for 20-years and was instrumental in getting DCPC status for Watcha Path. He said that the current usage of the road is not at all what was intended.

William Kennedy said that Mr. Goggins is not running a home business and that Mr. Goggins had an established commercial operation prior to his moving to Watcha Path. Mr. Kennedy said that he has lived on the road for 21 years and is a year-round resident. He said he saddened to see the deterioration of the road and the transformation of a quiet residential neighborhood into an industrial park. He said that the road cannot sustain the current level of commercial traffic. He said that he believes the town has an obligation to find an alternate access to the West Tisbury Road.

C. J. Rivard said she was frustrated and confused. She said that it was her understanding that permission to operate a business had to be applied for in advance and with prior notice to existing residents. She said it seemed to her that the applicant was asking for an after-the-fact approval. She agreed that the road cannot safely support the current amount of traffic

Mr. Stratakos continued his remarks saying that he has contributed \$5000 to road maintenance, while Mr. Goggins has contributed \$800. He said that he believes Mr. Goggins has the right to operate his office on his property. He said the problem is with the materials being dropped off and picked up by a fleet of vehicles. He said Mr. Goggins' operation has to get off the road and noted that this is the position of a majority of residents on the road.

Geoff Paterson said that he has lived on the road since 2001. He said he has seen the amount of businesses slowly growing over the years. He said that his main concern is that if this business is granted a special permit, it will set a precedent and others will follow suit.

Dan Doyle of the Martha's Vineyard Commission said he was not an abutter and was just present to ensure that any decision was consistent with the requirements of the bylaw regarding special ways.

Inspector Milne noted that she has measured and mapped the roadway. She said that other than some additional turn-outs, it does not appear to be markedly different from the original layout.

Ms. Dolby asked Inspector Milne about the status of the other businesses on the road. Ms. Milne replied that Mr. Teles is relocating his business to Vineyard Haven. She said that he has been in frequent conversation with her over many months, and it has taken him some time to find a suitable location to relocate his business. She noted that commercial space is extremely difficult to come by on the island.

Ms. Milne said that she has told Mr. Miller that no commercial activities of any kind are permitted on his property. She said she believed that Mr. Miller will be applying to the ZBA in the near future for permission for some additional housing on his property.

Ms. Milne reiterated that Mr. Bennett's solar array is allowed by right. His tenant, who was using the property to store construction materials and equipment, has moved on and removed all his equipment and vehicles.

Betsy Harrington said that she has lived on the road for 23 years and said that the Gogginses are wonderful neighbors. She said that there has been a lot of building on the road in recent years, which means lot of construction vehicles and equipment. She said she does not want to see Mr. Goggins scapegoated for all the other businesses on the road or for all the construction vehicles.

Carlos Teles said that he established his business in 2011 and purchased his property in 2016. He said he would like to apologize to his neighbors for any nuisance his business has caused. He said he has been looking for a new site for his business for three years and finally signed an agreement two weeks ago. He and his crew are currently cleaning up the new site and plan to move his equipment and supplies there as soon as that is done.

He said he believed that Mr. Goggins has always attempted to be up-front with his neighbors and made a good faith effort to find alternative access to the West Tisbury Road. He said he has worked with Mr. Goggins and Mr. Green on road maintenance.

Mr. Teles said that he does not think that the current efforts at road maintenance are effective, and noted that much of the new material that was recently put down has been washed away. He said he thinks the road could benefit from professional maintenance.

Chairman Dolby then asked for the applicant's rebuttal. Mr. Moriarty said that Mr. Kennedy was correct in saying that Mr. Goggins had an established business when he moved to Watcha Path. He said everyone knew what Mr. Goggins intended to do with his property and that he was fully up-front with the Building Inspector and received permits to do exactly what he is doing. Mr. Goggins spent a lot of time with the former building inspector and made an enormous investment relying on the fact that he had a valid permit to operate his business.

Mr. Moriarty said he believed Mr. Goggins is being scapegoated because of the other businesses that came after him. He said that Mr. Goggins has attempted to find alternate access to his property, but the only alternate access crosses several different lots, as well as one without clear title.

Mr. Moriarty said that Mr. Goggins understands everyone's frustrations and is willing to put up a sizable sum of money to maintain the road and limit traffic from his business.

Ms. Dolby commented that the Zoning Board is in an uncomfortable position. She said that, on the one hand, she believes the board understands the neighbors' concerns and, on the other hand, Mr. Goggins received a permit to build his barn and run his business and has done everything right. She said she believes part of the problem comes from the interpretation of 'customary home business.' She noted that the bylaw was written decades ago and now believes it is out of date. She said that carpenters are now contractors, and electricians are now electrical contractors.

Ms. Bray asked if the business was smaller when originally permitted. She commented that one of the requirements for granting a special permit for a business in a residential district is that 'traffic generated shall not exceed the volume normally expected in a residential neighborhood.' She said that no longer seems to be the case.

Ms. Whipple agreed and said that she did not think that the current level of traffic complies with the bylaw.

Mr. Hoehn noted that if Mr. Goggins had not been given the green light at the beginning, he would not have made a significant investment in this property and would have looked elsewhere. He was told by Mr. Jason that what he intended to do was allowed by right; the permit specified storage of pool equipment, pool chemicals, and other supplies in a 5000 s.f. structure.

Mr. Moriarty commented that Mr. Goggins is willing to limit van traffic to six round trips per day. He said that there is currently no space at the airport industrial park.

Ms. Grant suggested that perhaps Mr. Goggins could find some secondary storage elsewhere to cut down on the traffic.

There was some discussion about how the traffic could be monitored and what it would entail to fix the road.

Ms. Grant asked if town counsel should be consulted about some of these issues.

After some further discussion, Ms. Dolby suggested that the hearing be continued so that the board could consult with town counsel. It was also suggested that the applicant and his counsel develop a management plan for how they intend to limit traffic to the site, and how those limits could be enforced.

The assistant suggested that the applicant contact a professional and have them draft an estimate of how much it would cost to repair and maintain the road.

In addition, Ms. Dolby said that there are a number of questions that need to be answered: How will the departure of Mr. Teles' business affect the traffic on the road? What exactly is Mr. Miller's plan for use of the road?

Ms. Whipple made a motion to continue the hearing until Wednesday, 20 April. Ms. Grant seconded the motion. Unanimously approved by roll-call vote.

Because new information will be entered into the record, Ms. Dolby said that the record will remain open to public comment. She asked that Mr. Goggins and Mr. Moriarty supply all new information in a timely manner so that the abutters and the board are able to review the documents in advance of the hearing.

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At the request of the applicant the hearing was continued to 22 June 2022 and again to 3 August 2022. The hearing was posted in the town hall on 19 July 2022, advertised in the *Gazette* on July 21<sup>st</sup> and July 28<sup>th</sup>. Abutters were sent notification of the continuation on 21 July 2022.

On Wednesday, 3 August 2022 at 4:00 p.m. the hearing was opened and held via Zoom. The following board members were in attendance: Pam Dolby – Acting Chairman, Nancy Whipple, Carol Grant, Tom Pierce, and Robin Bray – alternate. The applicants Mr. & Mrs. Goggins and their attorney, Robert Moriarty were present. Attorney for the abutters, Dylan Sanders was also present as were several abutters. Chairman Dolby opened the meeting and explained the board's policies and procedures. She noted that the meeting is being held in compliance with both the Governor's order and the Open Meeting Law.

Ms. Dolby asked Ms. Milne, the Building Inspector, to give the board an update on the Watcha Path situation. Ms. Milne said that she had issued cease & desist orders to Carlos Teles and Chris Miller to stop all commercial activities on their properties. She said that unfortunately issuing a cease & desist order is not a magic wand, but the beginning of a process. Neither Mr. Teles nor Mr. Miller have applied for special permits to operate a business in a residential neighborhood.

Ms. Milne said she sat at the end of the road one morning last week and counted 11 Miller vehicles, 9 Teles vehicles, 11 unmarked commercial vans which, she said, were identical to ones she has seen on Miller job sites, and 3 Atlantic Pool trips.

Ms. Milne said that, in her opinion, of the three businesses currently operating, Atlantic Pools is by far the least impactful. She said that with certain conditions, she believes that Atlantic Pool will be able to comply with the bylaw as required.

Ms. Milne said that she was working with Lenny Jason, the former Building Inspector, when Tekomah began the process of finding land to purchase for his home business. She said that Mr. Goggins was very transparent and above board with his plans, and was given a permit to construct the barn and run his business as of right in accordance with 2.1 A 4 b Ms. Milne said that if she had been building inspector at that time, she most likely would have asked Mr. Goggins to get a special permit to operate a business in a residential neighborhood. After receiving a number of complaints regarding commercial traffic on the road, she told Mr. Goggins to apply for a special permit.

Ms. Milne said that Atlantic Pools has not grown substantially since the original permit was issued; it is the same operation that was permitted by Mr. Jason in 2017. Ms. Milne reiterated that Mr. Goggins did a lot of research prior to purchasing the property and has always operated with a valid permit. She asked that the board take these circumstances into consideration when reviewing the application.

Robert Moriarty, attorney for the applicant, said he agreed with Ms. Milne and said that Mr. Goggins had always been completely transparent about his plans, which were fully approved by the former building inspector.

Mr. Moriarty said that his client has worked hard to resolve issues with his neighbors. He noted that one of the abutters said in a recent letter to the board, that he would only support Mr. Goggins if he used an alternate access other than Watcha Path. Mr. Moriarty said that a legal alternative access is not possible for several reasons: such access would have to go across government-owned property and it is impossible to get a prescriptive easement over such property. He also noted that Matt Poole, Edgartown's Health Agent, did not think alternate access through the dump would be viable. In addition, at least one of the parcels necessary for creating an alternative access route does not have clear title.

Mr. Moriarty said that he also explored the possibility of a traffic study utilizing a license plate reader. However, that proposal was met with opposition from several abutters who cited privacy concerns.

Mr. Moriarty proposed the following conditions:

1. Applicant will limit the total number of round trips on by vehicles registered to Atlantic Pools to a maximum of six per day on Watcha Path.
2. Bulk deliveries from Cape Cod Express will be limited to two times per month.
3. Applicant will pay a minimum of ten shares (or about 1/3 of the total shares) of annual road maintenance to the Watch Path Road Association.
4. Applicant will also cover the costs to grade and repair the road on an as needed basis to ensure that the road remains in excellent shape.

Mr. Moriarty said that Mr. Goggins is trying to be a good neighbor. He is also proposing to have deliveries of materials made to an alternate site. In an effort to keep traffic down as



much as possible, he is requiring his employees to take their work vehicles home at the end of the day. He said that Mr. Goggins will provide the board with a list of all the vehicles registered to Atlantic Pools. He said that Mr. Goggins does not have any unmarked vans. Mr. Moriarty concluded by saying that Mr. Goggins meets all the requirements of 2.1 B 6 and 10.2 A 2: There are no more than four employees on the premises who are not also resident there. Atlantic Pools has two employees in the office. There is sufficient off-street parking, adequate storage out of view of the public. The business does not generate odor, dust, fumes or glare. The business does not contribute to erosion or increased surface drainage. The business does not pollute the water or air. The business is not visible from the public way and is well-screened from neighboring residences. The only section of 10.2 A 2 that is concerning is section b: "Traffic generated shall not exceed the volume normally expected in a residential neighborhood." Mr. Moriarty said that traffic is really the only issue and, he believes, the proposed conditions will bring the traffic volume in line with what is typical in a residential district. He noted that Fed Ex and UPS are frequent users of Watcha Path making deliveries not just to Atlantic Pools but to all the residences on the road.

Dylan Sanders, attorney for neighbors Jonathan Spalter, Anthony Stratakos, and Daniel Stiles, reviewed the points made in his letter of 2 August 2022 [see file], which was circulated among members prior to the hearing. Mr. Sanders said that he believed the application is premature and first requires a 'Special Way Special Permit' from the Planning Board. Mr. Sanders said that the use of the property for a 'significant construction and maintenance operation' with multiple vehicles and employees is not appropriate in this location.

Mr. Sanders was also concerned that should the permit be granted to Atlantic Pools it would set a precedent that would open the door to other businesses and permanently alter the rural and residential character of the Watcha Path neighborhood. Mr. Sanders also took issue with the fact that Atlantic Pools essentially established its business in a residential zone and asked for "permission later." He said that the board is under no obligation to abide by the decision of the previous building inspector.

He urged the board to deny the request.

Ms. Milne interjected that the Edgartown Zoning Bylaw does not stipulate a specific order in which an applicant must apply for a special permit if multiple boards are involved. She said she instructed the applicant to apply to the ZBA.

Jonathan Spalter of 17 Jennie Lane said that if Mr. Goggins truly respected his neighbors and the Special Way, he would not have brought his commercial enterprise to Watcha Path. He said that allowing this business to operate would 'open the floodgates' to other businesses and ruin the neighborhood. He said that he opposed the use of Watcha Path by commercial vehicles and said it is an unsafe situation for the many recreational users of the road. He said that there were several instances when he and his son were forced off the road by commercial vehicles.

Daniel Stiles of 14 Jennie Lane said that he too is opposed to the large volume of commercial vehicles using the road. He said that there are three-axle tractor trailers regularly using the road, which poses a danger to kids riding their bikes or just walking home from school. He said that he believes the business has outgrown the neighborhood and said he was worried

that if the board were to grant the special permit, it would set a bad precedent going forward.

Linda DeWitt of 77 Watcha Path said she believed that twenty new pools were approved last year in Edgartown. She said that only two pool companies were listed in the Vineyard yellow pages: Atlantic Pools and Island Pools.

David Mance of 69 Watcha Path said that he would only support Atlantic Pools operation provided they secured alternate access.

Robert Green asked that if the special permit were granted, would it be grandfathered or transferable to the next owner of the land.

Ms. Dolby replied that the special permit would not be transferable without specific approval from the ZBA. She also noted that many of the pools built in the last year did not require special permits from the ZBA, and were allowed by right. She also noted that the board has denied requests for special permits for pools as well. Each application is reviewed on its own merits, which speaks to the issue of precedence brought up by several abutters. Because each permit granted or denied by the board is individually reviewed and has its own set of specific circumstance, the board is not automatically bound by a previous decision.

Letters from abutters Linda DeWitt & Robert Green, CJ & Jim Rivard, David & Cheryl Mance, as well as a copy of a letter sent to the building inspector by members of the Watcha Path Association (listed, but not signed) were circulated among the members prior to the hearing.

Mr. Moriarty said that the possibility of securing alternate access through the dump road was seriously explored but ultimately unsuccessful. Mr. Moriarty said that Mr. Goggins proposal to limit van traffic to a maximum of six trips per day is in line with what could be expected in a residential neighborhood. Mr. Moriarty noted that there has been significant construction on Watcha Path resulting in increased traffic from maintenance services in addition to the usual Fed Ex and UPS vans, which make multiple trips per day along the whole length of Watcha Path. He noted that there are also several AirBnBs on the road providing weekly rentals.

Mr. Moriarty said that he researched police department records and found no police reports pertaining to traffic incidents involving Atlantic Pools. He said that he believes that his client has been scapegoated and is taking the blame for excess commercial traffic on the road, which is primarily caused by both Teles and Miller, who have a multitude of commercial vehicles and heavy equipment using the roadway. He said that Mr. Goggins does not own a tractor trailer. He urged the board to grant Mr. Goggins a permit with the conditions stipulated earlier.

Ms. Dolby then closed the public hearing for discussion by the board. Ms. Grant asked Ms. Milne if Atlantic Pools was a smaller operation when the permit was approved in 2017. Ms. Milne replied that she does not think it is any bigger now than it was when the permit was issued. The barn is a large structure. She reiterated that Mr. Goggins was always very transparent about his plans and the scope of his business,

Ms. Bray asked what types of vehicles are used by Atlantic Pools. Mr. Moriarty replied that Mr. Goggins uses regular utility vans and owns one small box truck.. He doesn't own any double-axle trailers. Mr. Moriarty said that Mr. Goggins makes an effort not to run his vehicles during heavy traffic times such as in the morning when people are leaving for school or work or in the evening when they are returning. He said that Mr. Goggins will submit a list of all his registered vehicles to the Zoning Board.

Ms. Bray asked if Mr. Goggins could keep a list of where his vehicles are going each day. Mr. Moriarty said that he does, and noted that each vehicle services multiple jobs per day. He reiterated that employees take the vans home each evening and only return to Watcha Path to pick up supplies for that day's jobs. He said he believes this is not an unreasonable amount of traffic for a residential neighborhood.

Mr. Pierce said that there is a lot of activity and new construction on Jennie Way and Watcha Path. He said he believes that Tekomah is being penalized and blamed for all the commercial traffic, when the bulk of is generated by others. He said that he understands and feels for the residents, but commented that the Vineyard has changed a lot in 40 years. He said he appreciates that Mr. Goggins is trying to work with the board and his neighbors and believes he should be given a chance. He said he thinks the traffic situation should be revisited after Teles and Miller conform to the cease & desist orders issued by the building department.

Ms. Whipple said that she agrees with Mr. Pierce's characterization and believes that Mr. Goggins is 'taking a hit' for others on the road. She said she would like to see what effect the conditions proposed by Mr. Goggins have on the traffic situation and thinks the board should grant the permit with the condition that it will be revisited it in a year.

Robin Bray had some questions about the Special Way Special Permit. Ms. Dolby commented that the portion of Watcha Path used by Goggins is a Special Vehicular Way with certain established rights that are differentiated from a non-vehicular Special Way.

Ms. Dolby said that she too agrees with Mr. Pierce and Ms. Whipple. She said she believes that both Teles and Miller have increased traffic on the road significantly more than Mr. Goggins. She said she doesn't believe that Teles or Miller were transparent with the building inspector about the scope of their businesses or the amount of traffic that would be generated by heavy equipment. She agreed that the board needs some time to fairly evaluate the traffic situation after Teles and Miller are no longer using the road for their trucks and heavy equipment.

Mr. Pierce made a motion to grant the special permit saying that he believed that with the conditions outlined by Mr. Moriarty and Mr. Goggins the proposal complies with the conditions of the bylaw. He suggested that the board schedule a review in the fall of 2023 to reevaluate the traffic situation and compliance with the proposed conditions.

Ms. Whipple seconded the motion and voted to approve the special permit with conditions.

Ms. Dolby, Ms. Grant, and Ms. Bray also voted to approve the special permit with conditions. Motion carried 5-0.

Respectfully submitted,

Lisa Morrison, Assistant to the Board