

# Edgartown Planning Board - Meeting Minutes

---

Tuesday, April 18, 2023, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, April 18, 2023, 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.*

## **CALL TO ORDER**

Meeting called to order at 5:30 PM. Present: Lucy Morrison (Chair); Mike McCourt, Glen Searle, Scott Morgan, James Cisek (alternate).

Absent: Fred Mascolo.

## **SCHEDULED BUSINESS**

### **5:30 PM - PUBLIC HEARING - Special Permit: Gary H. Sherr & Andre L. Campagna, 6 Majors Cove Ln (7-2.10)**

In accordance with Sections 5.2.A.3.C, 10.1.C.1 and 17.7.D of the Edgartown Zoning Bylaw, the Planning Board will hold a public hearing on Tuesday, April 18, 2023 at 5:30 PM, at the request of Ross P. Seavey, Martha's Vineyard Land Law, Inc., on behalf of Gary H. Sherr & Andre L. Campagna, to exceed the maximum height for a new single-family dwelling situated in the R-20 Zoning District and the Island Roads Zoning Overlay District.

The subject property is located at 6 Majors Cove Ln, Assr. Pcl. 7-2.10.

*Present for the Applicant: Ross P. Seavey, Martha's Vineyard Land Law, Inc.*

#### **Presentation**

Mr. Seavey presented plans of the site, including cross sections of the home describing the maximum elevation, photos of the site, etc.

There was discussion in regard to past efforts to level the site by a former owner by filling; there were questions in regard to whether the site could be returned to original grade, with opposing concerns that doing so would exacerbate existing drainage problems on the site.

There was discussion in regard to visual screening, the setting of the proposed house in relation to other adjacent structures, and consideration of screening.

The type of structure was noted as a modular home. The applicant noted that there would be adequate access from Major's Cove Road for installation of the home on the site.

The requirements for maintaining existing trees in the 'tree yard' were briefly noted.

The building was noted as having nine-foot ceilings on the first floor, and eight-foot ceilings on the second floor.

Mr. Bill Potter (Squash Meadow Construction), noted that the site was relatively clear of trees. Mr.

Potter noted that the house would be an "eyesore" if the grade were sunk lower.

The foundation is proposed to be eight feet in height.

Ms. Judy Feingold noted their concern relative to the proposed height, and described their experience in building their house.

Mr. Robert Feingold also expressed some concern relative to the overall size of the house.

There was some discussion relative to the context of the house – whether the ridge of the proposed structure would be higher or lower than houses adjacent to it. Mr. Seavey noted that the house would likely be about average for the immediate area.

Mr. Potter noted that the ridge was only about 16 feet above the road height.

Mr. Morgan suggested a site visit, and Ms. Morrison agreed.

Ms. Diane Kobus noted that the local homeowners association had reviewed the plans, and support the proposal. Ms. Kobus also noted that, if the landscape were returned to original grade, "it would be in a hole", and would not be appealing from her point of view.

The applicants were requested to erect a 'story pole' in order to better understand the height of the structure.

#### **Continuance**

It was MOVED by Searle, SECONDED by Morgan

*To schedule a site visit on May 2, 2023, at or around 9:15 AM, and to continue the public hearing to May 2, 2023, 6:45 PM.*

VOTED: 5, 0, 0. (6:25 PM)

#### **5:50 PM - PUBLIC HEARING - Special Permit: The 191 Katama Road Nominee Trust, 191 Katama Road (29-125.22)**

In accordance with Section 10.1.K of the Edgartown Zoning Bylaw, the Planning Board scheduled a public hearing on Tuesday, April 18, 2023 at 5:50 PM, at the request of Doug Hoehn, Schofield Barbini and Hoehn, on behalf of The 191 Katama Road Nominee Trust, to remove trees within the Tree Yard for clearing for septic system and grading.

The subject property is located at 191 Katama Road, Assr. Pcl. 29-125.22.

*Present for the applicant: Doug Hoehn, Schofield Barbini and Hoehn*

#### **Presentation**

Mr. Hoehn presented a photographic overview of the site.

The subject property was reviewed.

Applicant needs to remove several qualifying trees from the tree yard / setback area in order to install the qualifying septic system.

The board reviewed the plan. Members asked whether placement of the septic elsewhere on the lot would be feasible (not possible, due to proximity of the lot to Edgartown Harbor).

No public comment was received.

It was noted that the minimal disturbance would not materially affect the neighboring lot (the Tower Hill Cemetery).

**Deliberation**

Members noted that the proposal calls for removal of more trees that would normally be acceptable; however, members also noted that the site had no other reasonable location for the septic system to be constructed, and disruption to the tree yard would most likely not materially affect adjacent neighbors.

It was MOVED by McCourt, SECONDED by Morgan

*To approve the plan as presented, and to allow removal of the trees as noted on the plan.*

VOTED: 5, 0, 0. (6:38 PM)

**6:00 PM – Public hearing – Proposed Changes to the Edgartown Zoning Bylaw**

In accordance with Section 5 of Chapter 40A of the General Laws, the Planning Board of the Town of Edgartown scheduled a public hearing to receive comment on proposed changes to the Edgartown Zoning Bylaw:

TO AMEND Sections 2.1.B.9, 2.2.B.13, and 2.3.B.9, to limit the ability of Edgartown Special Permit Granting Authorities to conditionally permit excessively oversized detached accessory dwellings (“guest houses”), and to limit new guest houses to no more than 1,250 square feet of Liveable Floor Space.

TO ADD Section 10.3.G – Fractional Ownership, Interval and Time Share Units – a proposal intended to preserve and protect housing stock in the Town from the market pressures attendant to fractional ownership, interval and time share uses and to protect neighborhoods from the impacts of such uses; and

TO AMEND Article 2, Section 2.4.B and Article 2, Section 2.5.B, to correct a scrivener's error, replacing a reference to Article 11.5 with Article 10.1.F in both cases.

The public hearing was opened at 6:40 PM.

**Presentation / Review – "Scrivener's Error"**

The board reviewed the proposed article:

*To see if the town will correct a Scrivener's error in the Edgartown Zoning Bylaw by*

*AMENDING Article II, Section 2.4.B (R-120) Conditionally Permitted Uses as follows:*

*Conditionally Permitted Uses requiring special permit from the Board of Appeals, in accordance with the regulations appearing in Article ~~11.5~~ **10.1.F** and Article 10.2.A of this Bylaw.*

*and further, by*

*AMENDING Article II, Section 2.5.B (R-120) Conditionally Permitted Uses as follows:*

*Conditionally Permitted Uses requiring special permit from the Board of Appeals, in accordance with the regulations appearing in Article ~~11.5~~ **10.1.F** and Article 10.2.A of this Bylaw.*

After review, it was MOVED by McCourt SECONDED by Morgan

*To approve recommend the proposed warrant article, and to forward the article to the Selectboard for inclusion on the next Town Meeting.*

VOTED: 5, 0, 0. (6:43 PM)

### **Presentation / Review – "Fractional Ownership"**

The board reviewed the proposed article:

*To see if the town will amend the Zoning Bylaw of the Town of Edgartown by inserting section 10.3.G "Fractional Ownership, Interval and Time Share Units", as follows*

#### ***Section 10.3.G – Fractional Ownership, Interval and Time Share Units***

##### ***10.3.G.1 – Intent and Purpose***

*The purpose of this section is to preserve and protect housing stock in the Town from the market pressures attendant to fractional ownership, interval and time share uses and to protect neighborhoods from the impacts of such uses.*

- a. Fractional Ownership, Interval and Time Share Units have similar character as commercial hotels, motels, lodges, and other commercial occupancy uses due to their transient nature and multiple short-term occupancies. Such commercial or quasi-commercial use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods.*
- b. The needs of transient occupants are averse to the interests sought to be protected and preserved in residential neighborhoods, because commercial uses for transient occupants may sacrifice other values critical to residential neighborhoods.*
- c. The Town deems it necessary and appropriate to protect the existence of year-round residences and the quiet and peace of the Town by preventing unwarranted commercialization from encroaching therein, including commercialization caused by the misuse of single-family residences.*

##### ***10.3.G.2 - Definitions:***

***Fractional Ownership, Interval or Time Share Unit.*** *Any real or personal property which is owned by a limited liability company, corporation, partnership, or other joint ownership structure in which unrelated persons or entities own, sell, purchase or otherwise for consideration create or acquire any divided property interest including co-ownership or fractional or divided estates, shares, leaseholds, or memberships which are subject to, or subsequently bound by any agreement limiting the right or functional ability of interest holders or their designees to occupy or use the property to their respective interests or any other agreement which limits interest holders' or their designees' use of the property to fractional reservations through stay limitations of any duration. Such use is established by any of the following elements:*

1. *co-ownership or fractional or divided estates, shares, leaseholds, or memberships which are openly advertised, marketed, or offered for sale and sold individually at separate times.*
2. *centralized or professional management.*
3. *reservation systems.*
4. *maximum or minimum day limits on each interest holder's occupancy or use of the property; or*
5. *management agreements or fees reflective of interval use or ownership, irrespective of whether the agreement may be cancelled individually or by any party.*

**10.3.G.2 – Regulation of fractional ownership, interval, and time share units.**

*The use of a Fractional Ownership, Interval or Time-Share Unit is conditionally permitted in the B-I, B-II, and B-III Business Districts.*

*The use of a Fractional Ownership, Interval or Time Share Unit is prohibited in the R-5, R-20, R-60, R-120, and RA-120 residential districts.*

**10.3.G.3 - Exceptions**

- a. *This section shall not be deemed to preclude the creation of mortgages, liens, easements or other similar interests encumbering the residential property as a whole to secure a loan or for any other legitimate purposes.*
- b. *This section shall not apply to non-commercial groups, such as families, partnerships, associations, or trusts with divided interests or agreements in which the real estate is held and transferred within the family, partnership, association or trust, as opposed to sold in fractional or divided interests on the open market.*

**10.3.G.4 - Severability.**

- *If any section, subsection, sentence, clause or phrase of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.*

*or take any other action relative thereto.*

There was discussion relative to whether the proposed article would affect short-term rentals (it would not); there was discussion relative to whether the article would affect existing businesses in the town (it would not).

Several members noted that Fractional Ownership, while an interesting concept, could cripple the housing market on the Vineyard.

No public comment was offered.

Mr. Finn asked whether the scope of applicability by zone is appropriate. After discussion, it was determined that Fractional Ownership should be conditionally permitted in the B-I, B-II and B-III districts, but not in any residential district.

It was noted that properties currently used as short-term rentals could quickly morph into a fractional

ownership situation, and would lead to poorer conditions in existing neighborhoods.

After review, it was MOVED by Searle, SECONDED by Cisek

*To approve recommend the proposed warrant article, and to forward the article to the Selectboard for inclusion on the next Town Meeting.*

VOTED: 5, 0, 0. (6:56 PM)

Ms. Joan Londergan expressed appreciation to the board for proposing the zoning bylaw change.

### **Presentation / Review – "Fractional Ownership"**

The board reviewed the proposed article:

*To see if the town will restrict the ability of Edgartown Special Permit Granting Authorities to conditionally permit excessively oversized detached accessory dwellings ("guest houses") by*

*AMENDING the Edgartown Zoning Bylaw, Article II (Residential Districts) Section 2.1.B.9 (R-60, Conditionally Permitted Uses) as follows:*

*2.1.B.9 ~~One~~ **One** guest house larger than 900 square feet in total livable floor space ~~provided~~ **may be permitted by the SPGA, provided that***

***1 - the parcel contains one acre of undisturbed natural land for each additional 50 square feet of livable floor space requested; For this section, "undisturbed natural land" shall mean land in its natural state, and not developed for any other form of vertical or horizontal construction, including structures, outbuildings, driveways, or managed landscaping.***

***2 - the proposed guest house does not exceed 1,250 square feet in livable floor space; and***

***3 - that all other requirements of 2.1.A.6 are met.***

*And further, by*

*AMENDING the Edgartown Zoning Bylaw, Article II, Section 2.2.B.13 (R-20, Conditionally Permitted Uses) as follows:*

*One guest house larger than 900 square feet in total livable floor space, ~~provided~~ **may be permitted, provided that***

***1 - the parcel contains one acre of undisturbed natural land for each additional 50 square feet of livable floor space requested; For this section, "undisturbed natural land" shall mean land in its natural state, and not developed for any other form of vertical or horizontal construction, including structures, outbuildings, driveways, or managed landscaping.***

***2 - the proposed guest house does not exceed 1,250 square feet in livable floor space; and***

***3 - that all other requirements of 2.1.A.6 are met.***

*and further, by*

*AMENDING the Edgartown Zoning Bylaw, Article II, Section 2.3.B.9 (R-5, Conditionally Permitted Uses)*

*One guest house larger than 900 square feet in total livable floor space, ~~provided~~*

may be permitted, provided that

1 - the parcel contains one acre of undisturbed natural land for each additional 50 square feet of livable floor space requested; For this section, "undisturbed natural land" shall mean land in its natural state, and not developed for any other form of vertical or horizontal construction, including structures, outbuildings, driveways, or managed landscaping.

2 - the proposed guest house does not exceed 1,250 square feet in livable floor space; and

3 - that all other requirements of 2.1.A.6 are met.

*or take any other action relative thereto.*

Mr. Morgan (principal sponsor of the proposal) described his intent as to put 'guard rails' on the special permit process relative to guest houses by providing reasonable requirements for an expansion of the livable area of accessory dwelling units.

Mr. Morgan noted that oversize (larger than 900 square feet) guest houses were permitted, provided that there was sufficient open space on the lot.

Mr. Morgan also noted that the language establishes expectations for the Town and local residents, and will help the board to make defensible decisions in the future.

Mr. Morgan recognized the rights of property owners to use their land for their own quiet enjoyment; however, the impact of larger structures on properties could impact the larger availability of resources for all residents.

Mr. McCourt noted his support for the proposal.

Mr. Searle also expressed support for the proposal.

Mr. Doug Hoehn noted that the proposal would disproportionately affect owners of larger lots, and restrict the ability of land owners to more fully develop their property. There are very large pieces of land, and folks are limited to a single house and/or a guest house.

Mr. Hoehn noted that allowing 'family compounds' would allow property owners to build multiple dwellings on a lot without going through the subdivision control bylaw.

Ms. Morrison asked whether the board would want to engage in a discussion relative to family compounds.

Mr. Morgan said that, while other towns might allow such a thing, that's 'other towns'.

Mr. Peter Breese asked whether the board could consider limiting the number of bedrooms in a guest house. Ms. Morrison noted that the Zoning Bylaws cannot regulate the interior structures of a residential structure. Mr. Breese noted that square footage is a 'rough measurement' of the impact of a structure, and the difference of a few hundred square feet may or may not make a difference. Zoning Bylaws (special permits) are intended to deal with 'grey areas'.

No other public comments were received.

Ms. Morrison noted that she would continue the public hearing later in the meeting.

*(continued at 7:11 PM)*

**6:30 PM - PUBLIC HEARING - Coastal District Special Permit: Selby Family 2012 Trust, 12 Swan Neck Road (43-3.23)**

In accordance with Section 5.1 of the Edgartown Zoning Bylaw, the Planning Board scheduled a public hearing on Tuesday, April 18, 2023 at 6:30 PM, at the request of Doug Hoehn, SBH, Inc, on behalf of Selby Family 2012 Trust, to construct a guest house which is larger than 900 square feet (1,345 square feet).

The subject property is located at 12 Swan Neck Road, Assr. Pcl. 43-3.23.

*Present for the applicant: Doug Hoehn, SBH, Inc; Darran Reubens, Breese Architects*

The public hearing was opened at 7:12 PM.

**Presentation**

Mr. Hoehn provided some background:

Property is 12 acres in size.

A main dwelling exists on the property, but is not insulated or winterized.

A guest house is proposed to serve as a four-season dwelling.

Application came in prior to public notice for "Guest House" bylaw change.

Mr. Hoehn noted that the applicant watched a previous application that was ultimately approved, in order to understand the maximum area that might be permissible or acceptable to the board.

The structure combines a guest house with a boat house – the boat house is not directly accessible to the interior of the guest house.

Ms. Morrison: Would you be willing to reduce the square footage to 1, 250 square feet? Mr. Hoehn we would rather not.

Mr. Reubens: We have already had to scale the guest house down from over 1,500 square feet.

The lot was noted as significantly wooded, and the site for the guest house is not visible from any public way, or from the water.

There was some discussion relative to the original proposal, the timing of the submission of this application, and the applicability of the proposed bylaw change.

The Selby's have owned the property since 2010. The existing dwelling has no central heat or A/C.

The exterior elevations of the proposed guest house were reviewed. The guest house is proposed to be a two-bedroom house.

The livable area of the proposed structure is 1,345 square feet.

The structure is 452 feet from the edge of the pond, and about 110 feet from the east lot line.

The existing property has an older septic (30+ years); a new advanced treatment system is proposed.

Existing driveway will remain as it is.

The structure will be in conformity with FEMA and FIRM-driven restrictions.

No view channels will be cut to favor the guest house.

Mr. Searle: Is there livable space above the existing garage? Yes - a detached bedroom.



Mr. Searle: I noticed a platform on the plan? Yes – it has been there for many years, constructed by former owner.

Ms. Morrison – overall height of the structure? 26 feet from Mean Natural Grade.

Ms. Morrison – Bedroom capacity of existing septic? Mr. Hoehn: Unknown; the new system is intended to handle all living areas as proposed.

Mr. Hoehn: Bedroom Counts: 4 in main house; 1 over garage; 2 in proposed guest house.

Ms. Morrison – capacity of existing septic? No clear answer was provided.

Mr. Hoehn noted that the choice for advanced treatment was to provide for cleaner wastewater treatment. Ms. Morrison – will there be restrictions placed on the new system to get a 'nitrogen credit'? Answer: No.

Mr. Reubens read into the record a letter of support from Ms. Pamela Kohlberg and Mr. Curt Greer, 20 Swan Neck Road.

No other public comment was presented.

Ms. Morrison: Dimensions? Mr. Reubens: 20 feet in depth; 395 square feet on first floor, 900 square feet on second floor, no basement.

Mr. Hoehn noted that the intention of the timing of this application, and the proposed size of this guest house, was determined by the recent approval of the Oyster Watcha guest house. The proposal was intended to be in line with what the board opted for.

Ms. Morrison: the board was NOT happy with the previous decision, and we worked significantly with that applicant to reduce the size of their original proposal.

Mr. Hoehn suggested a possible continuance. Mr. Selby suggested that he would rather proceed.

There was some discussion relative to options for continuation of the public hearing; Mr. Finn noted that the earliest date for a continuance would be May 16.

Options in case of a denial (2-year moratorium, or a request for repetitive petition) were discussed.

Mr. Morgan noted that the 1,250 square foot limit (as proposed in the zoning bylaw change) is significantly important to him; while he respects the intention of the applicant, the board has to consider the larger issues.

Mr. Selby reiterated his intention to try to move forward.

The options (denial, approval with conditions, approval as presented) were reviewed.

Mr. Finn noted that, if the board approved with conditions, one condition could be submission of a revised plan showing conformity with those conditions prior to receipt of a building permit.

Mr. Searle: Would the Planning Board receive a copy of the revised plans? Answer: yes.

It was MOVED by Morgan SECONDED by Searle

*To approve construction of a 1,250 square foot guest house; applicant must submit a new plan to building inspector for confirmation of conformity with this condition.*

VOTED: 5, 0, 0. (7:51 PM)

## **OTHER BUSINESS (MAY BE TAKEN UP AT ANY TIME)**

### **Req for SP Extension – SP(Coastal – Pool) Howe Realty Trust – 9 Guernsey Ln (36-334)**

The board took up a request for an extension of a special permit, submitted by Mr. Doug Hoehn on behalf of the How Realty Trust. The original Special Permit, which granted permission to construct a pool, a hot tub and a gazebo on a conforming lot in the inland zone of the Coastal District, was issued on April 14, 2021.

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

*To approve a one-year extension to the Special Permit granted to Howe Realty Trust on April 14, 2021. Special Permit remains in effect through April 14, 2024. All original conditions remain in full force and effect.*

VOTED: 5, 0, 0. (7:54 PM)

### **Additional**

Ms. Morrison noted that he had received a letter from Fred Mascolo, who passed on his best wishes to the board.

## **CONTINUATION OF THE GUEST HOUSE BYLAW PUBLIC HEARING**

Ms. Morrison continued the guest-house bylaw public hearing.

It was noted that West Tisbury had regulations relative to guest houses, or additional principal dwellings on a single lot.

Ms. Morrison noted that a continuance of the public hearing to a date certain makes sense.

It was MOVED by Morrison, SECONDED by Searle

*To continue the public hearing to May 16, 2023, 5:30 PM.*

VOTED: 5, 0, 0. (7:59 PM)

## **ADJOURN**

There being no further business, it was MOVED by Morgan, SECONDED by Searle

*To Adjourn*

VOTED: 5, 0, 0 (8:01 PM)

Respectfully submitted,

Douglas C. Finn  
Clerk Pro Temp

## Meeting Participants

Name (Original Name)

Doug Finn# Tech (Town of Edgartown)

Lucy Morrison

Diane Kobus

garysherr

Judy Feingold (roger)

Bill

hsullivan

Scott Morgan (Scott)

Glen Searle (Glen 's iPad)

James Cisek

Mike McCourt (mikemccourt)

Michael Shalett

Ross P. Seavey Esq.

NSelby

Brooke Kushwaha - Vineyard Gazette (Brooke Kushwaha)

michaelculbert

Abigail Rosen

Douglas Hoehn

Joan Lonergan

Kris Horiuchi

Robert Forrester

Chris Dunn (James Moffatt)

Ellie Wise

Jeffrey Wolk

Darran

Ellie Wise (iPhone)

Greg Lombardi

19172254897 (no name given)

Peter Breese