

# Edgartown Planning Board Minutes

Tuesday, March 10, 2020

A regular meeting of the Edgartown Planning Board was scheduled for Tuesday, March 10, 2020, at 5:30 PM at the Edgartown Town Hall, Main Street, Edgartown.

*PRESENT: Fred Mascolo, Lucy Morrison, Glen Searle, Scott Morgan, James Cisek (Alternate)*

*ABSENT: Michael McCourt*

## **CALL TO ORDER**

The meeting was called to order at 5:30 PM, and a quorum was declared.

## **SITE VISITS**

The following site visits were conducted:

- 9:10 AM – 36 SMITHS WAY (36-343.1)
- 9:30 AM – 24 OCEAN VIEW AVENUE (29-149)
- 10:00 AM – 50 OYSTER WATCHA ROAD (41-1.3)

No deliberation was conducted as part of any site visit.

## **SCHEDULED BUSINESS**

**5:30 PM: PUBLIC HEARING: SUBDIVISION -- (CONT'D FROM DEC 17, OCT 15, AUG 6, APRIL 2, MAR 5, 2019, NOV 27, SEP 18, JUL 24, MAY 15, APR 17, 2018) MEETINGHOUSE WAY LLC, 139 MEETINGHOUSE WAY (37-47)**

The public hearing was continued at 5:30 PM.

The chair suggested continuing the public hearing to a date certain, given the absence of one member, and that the matter was still under deliberation in front of the MV Commission.

It was **MOVED** by Searle **SECONDED** by Morrison

*To continue the public hearing to June 2, 2020.*

VOTED: 5, 0, 0.

## **ADMINISTRATIVE BUSINESS (TAKEN OUT OF AGENDA ORDER)**

### **Communication**

Mr. Finn noted two letters received, included in the packet:

- An email from February 28, 2020 from Bill Veno (MV Commission) in regard to CPTC Training Opportunities on island. Mr. Veno requested a response. Board took the matter under advisement.
- A letter from the West Tisbury Housing Bank Committee, inviting participation in reconsidering a regional (island-wide) housing bank, and development of state legislation to implement same. Chair recommended allowing the Affordable Housing Committee to take the lead.

Mr. Finn also noted that the CPTC conference, scheduled for Saturday, March 21, 2020, had been cancelled.

Finally, Mr. Finn noted a recent SJC case (Murchison v. Sherborn Zoning Board of Appeals, March 5, 2020, SJC-12867) and its impact on local zoning decisions and potential appeals to same.

*The appeal was made by an abutter to a proposed house, to be constructed on a lot that was non-conforming only due to regulations in Sherborn requiring minimum lot width of 250 feet (200 ft). The proposed structure met all other dimensional requirements. A lower court found for the town, and the plaintiff filed an appeal with the SJC.*

*The decision was less about density, and more about the standing of the abutter in any appeal.*

*The plaintiff stated that as an abutter, they had the right to appeal the decision to allow construction of a house on a lot that did not have the required width (200 instead of 250 feet).*

*The argument for the defense was a rejection of "density plus proximity equals injury", and insisted that, upon appeal, the appellant must provide evidence of a 'particularized injury' in order to successfully prevail.*

*The case was strongly made that simply being able to perceive something did not in and of itself cause injury. Simply being able to see a thing, or hear a noise was not enough; rather, one has to provide evidence that the perception resulted in a disturbance (e.g., "the sound is audible 24 hours a day, and keeps me up at night"). Simply being an abutter to, in this case, a relaxation of the lot width requirement (through a variance? special permit?) does not constitute an injury, and that, since no particularized injury was successfully established, the plaintiff were unable to establish a 'particularized injury', and lost their standing on appeal.*

### **Master Plan Steering Committee**

Mr. Finn noted that after a survey of a majority of appointed committee members, there was no consensus for a first meeting date of the Master Plan Steering Committee, and recommended that the Committee be invited to attend the meeting of the Planning Board on April 21, 6 PM, for an organizational meeting. After discussion, the Planning Board concurred. Master Plan Steering Committee members would be notified.<sup>1</sup>

### **Unscheduled Business**

There was some discussion related to properties that have fallen into disrepair, or are becoming repositories for clutter, scrap metal, unregistered cars and boats, and other materials. Board members reviewed the various avenues by which resident concerns could be addressed.

### **MINUTES - FEBRUARY 25, 2020**

Minutes from February 25, 2020 were distributed.

It was MOVED by Morrison, SECONDED by Searle

*To approve the minutes from February 25, 2020.*

VOTED: 4 (MASCOLO, MCCOURT, MORRISON, CISEK), 0, 2 (SEARLE, MORGAN).

### **5:45 PM: PUBLIC HEARING: SP (COASTAL) – 36 SMITHS WAY REALTY NOMINEE TRUST (36-343.2)**

In accordance with MGL Chapter 40A, Section 10, the Edgartown Planning Board held a public hearing in the Town Hall, Main Street, on Tuesday, March 10, 2020 at 5:45 PM, at the request of Doug Hoehn, Schofield, Barbini and Hoehn, Inc., on behalf of The 36 Smiths Way Nominee Realty Trust, Owner, to replace an existing swimming pool with a new swimming pool, a spa, and a pool equipment enclosure in the inland zone of the Coastal District.

This application was made in accordance with Section 5.1 of the Edgartown Zoning Bylaw. The property is located at 36 Smith's Way, Assr. Pcl. 36-343.2. Copies of the application were made available in the Planning Office for public review.

The public hearing was opened at 5:45 PM.

*Present for the applicant: Doug Hoehn, SBH, Inc., Mr. Paul Pertile, Builder / Contractor*

### **Presentation**

Mr. Hoehn presented the plan.

An existing pool that is in disrepair will be replaced with a new pool of the same size, in the same location and orientation. A 7' x 10' spa on the north side of the pool will be added.

The location is 'barely' inside the coastal district. There was some discussion related to the specific boundary of the Coastal District as related to the application.

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<sup>1</sup> Completed – email sent 3/11/2020. DF.

Mr. Paul Pertile presented a landscape plan (included in project file) that proposed landscaping as screening for the abutting neighbor to the north.

Mr. Pertile spoke about the deliberation leading to the decision to replace the existing pool.

There was discussion related to existing pool equipment on a neighbor's pool equipment, the noise from the proposed equipment being a nuisance to guests staying in the guest house, and standard conditions for approval (rescue buoy, fencing, lighting, etc.)

The location of the fence was described to the satisfaction of the board.

It was **MOVED** by Searle **SECONDED** by Morrison

*To close the public hearing.*

VOTED: 5, 0, 0.

Public hearing was closed at 5:55 PM.

### **Deliberation**

The application was met with the general satisfaction of the board.

It was **MOVED** by Searle **SECONDED** by Morrison

*To approve the application as presented, in accordance with the plans as presented, and in general compliance with the landscaping plan as presented, with standard conditions for swimming pools.*

VOTED: 5, 0, 0.

### **6:00 PM: PUBLIC HEARING: SP (COASTAL) - CATALINA ISLAND NOMINEE TRUST, 24 OCEAN VIEW AVENUE (29-149)**

In accordance with MGL Chapter 40A, Section 10, the Edgartown Planning Board will hold a public hearing in the Town Hall, Main Street, on Tuesday, March 10, 2020 at 6:00 PM, at the request of Doug Hoehn, SBH, Inc., on behalf of Catalina Island Nominee Trust, Owner, to

- (1) remove main dwelling (shore zone) and replace with same size dwelling in same location at same height of existing dwelling (a special permit granted in 1992 allowed a height of 28'4" above mean grade);
- (2) Remove existing garage (inland zone) and replace with new garage with detached bedroom;
- (3) Remove pool house (inland zone) and replace with new pool house with second floor 900 sf guest house; and
- (4) Remove existing pool (inland zone) and replace with new 40'x40' pool.

This application is made in accordance with Section 5.1 of the Edgartown Zoning Bylaw. The property is located at 24 Ocean View Avenue, Assr. Pcl. 29-149. Copies of the application are available in the Planning Office for public review.

*Present for the applicant: Doug Hoehn, SBH, Inc.*

The public hearing was opened at 6:01 PM.

### **Presentation**

Mr. Doug Hoehn introduced Julie Hausch-Fen, Kristine Makwinski (Seldorf Architects, New York, NY)

Mr. Hoehn described the general proposal, reviewing the existing site conditions. Mr. Hoehn noted that all details of the proposal are included in the Special permit request, in case a special permit is required.

Mr. Hoehn noted that the proposal had been previously reviewed by both Lenny Jason and Reade Milne.

Main House: existed prior to zoning, but was rebuilt in the 1990s, using up the 10% expansion at that time.

The proposed new structure will be the same square footage, and the same height as the existing structure.

The general location is the same, with very minor variations. The demolition and rebuild of the house in the

shore-zone was discussed, and it was noted that prior decisions have allowed owners of houses in the shore zone to conduct full demolition and rebuild, provided that the structure sits on the same footprint.

Garage: The proposed garage will have a detached bedroom.

An existing 'lighthouse' style observatory will be removed.

The pool house will be reconstructed, with a 900-square-foot guest house as a second floor.

Ms Hausch-Fen provided an overview of the existing structures. The new garage will have three-bays.

The detached bedroom will have 400 square feet, including the bathroom. The pool house will include a gym, with a guest house above.

The layout of the proposed driveway was reviewed.

The exterior elevation of the main house was reviewed.

The overall house design would have an overall 'silver / gray' finish.

Sections through the main house were reviewed.

Mr. Finn noted that all abutters had been notified by mail, and no comments or inquiries about the application had been received.

The garage height was noted as being 25 feet in height from mean natural grade. A 400 square foot detached bedroom was noted on the plan. The garage / utility building would also include a 'catering' area, including refrigeration and a sink, with storage on the second floor. The detached bedroom would be on the second story of the utility building. Connections between the detached bedroom, catering kitchen, and second story storage was discussed.

The size and scope of the pool house / guest house was discussed. The floor plan was reviewed to determine the separation between the two uses. The need for a second means of egress from the second-floor guest house was also reviewed.

The board expressed concurrence that the detached bedroom should have no direct access to storage or the catering areas, and that the guest house should show a second means of egress.

Revised plans would be prepared by the applicant and presented to the board at a later meeting.

Mr. Morgan expressed concern about the composition of the guest house / pool cabana, and requested that the board hear from Reade Milne in regard to the matter.

There was discussion related to the capacity of the wastewater handling system.

Other notes:

- The house, garage, and guest house / pool house intend to replace existing structures on the lot.
- The proposed detached bedroom (two-store, 20' x 50') is a new use on the lot.
- The Conservation Commission has approved the proposal (reference: Order of Conditions as issued on February 20, 2020)
- The proposed swimming pool is double the size and of the existing pool, but in roughly the same location.

It was MOVED by Morgan, SECONDED by Searle

*To continue the public hearing to March 24, 2020, at 6:00 PM.*

VOTED: 5, 0, 0.

**6:25 PM: ANR: 27 SLOUGH COVE ROAD (44-12.4) ALEXANDRA EM AND PATRICK S. TURNER**

Division of land into two conforming lots; both lots have adequate frontage on a public way, and will have access to buildable portion of lot. Agent: Michael Tomkins (VLS&E)

*Present for the Applicant: Mr. Reid Silva, VLS&E.*

The planning board reviewed the application. The proposal would create two conforming lots, both with adequate frontage, and both with access to the buildable portion of the lot across said frontage. There was some discussion related to the potential for a curb cut, and the benefit of a shared curb-cut.

Mr. Patrick Mahady, an abutter, noted that as the contract purchaser, he plans a driveway that will be 110' from the existing driveway, which would make it roughly equidistant to existing curb cuts.

It was MOVED by Morgan SECONDED by Morrison

*To endorse the plan as not requiring approval under subdivision law.*

VOTED: 5, 0, 0.

Mr. Finn was directed to draft a letter to the Highway Superintendent recommending due diligence when granting a curb-cut onto the lot.

### **6:30 PM: PUBLIC HEARING: SP (EPAD) – 50 OYSTER WATCHA ROAD TRUST (41-1.3)**

In accordance with MGL Chapter 40A, Section 10, the Edgartown Planning Board held a public hearing in the Town Hall, Main Street, on Tuesday, March 10, 2020 at 6:30 PM, at the request of Doug Hoehn, SBH, Inc., on behalf of The 50 Oyster Watcha Road Nominee Trust, Owner, to construct a swimming pool, including a dry-laid stone retaining wall and other landscaping elements, in Zone 2 of the Edgartown Ponds Area District. No pool cabana or similar structure is proposed.

This application was made in accordance with Sections 5.1 and 5.6 of the Edgartown Zoning Bylaw. The property is located at 50 Oyster Watcha Road, Assr. Pcl. 41-1.3. Copies of the application were made available in the Planning Office for public review.

*Present for the Applicant: Mr. Doug Hoehn, SBH, Inc.; Mr. Caleb Nicholson and Mr. James Holenko, Contemporary Landscaping.*

The public hearing was opened at 6:53 PM.

#### **Presentation**

Mr. Hoehn described the proposal (more fully described by the plans and application).

A homeowners association setback of 100' is being observed.

The pool is in the inland zone, and has been approved by the Conservation Commission.

The pool will be about 20' x 60', with a raised hot tub, a four-foot high dry-laid stone screening wall, a blue-stone patio, sunken fire pit, and a wooden fence providing security isolation.

The pool will be salt-filtration.

The pool filter and equipment will be adjacent to the existing transformer due west of the present dwelling.

The pool water will likely be heated with propane.

Fuel tanks will be located closer to the driveway, about 200 feet north of the pool equipment location.

A heat-pump for the pool may be considered.

An architect who has been contracted for work on the existing dwelling is LEED certified, and the renovations to the house will likely employ renewable energy.

The closest neighbor is about 600' away from the location of the pool equipment.

It was MOVED by Searle SECONDED by Morrison

*To close the public hearing.*

VOTED: 5, 0, 0.

### **Deliberation / Findings**

From the Swimming Pool Checklist:

- The location of the pool is proposed to be shielded as best as possible from abutters (distance from pool edge to nearest abutter structure is about 400 feet)
- Bottom of pool structure is about 1.5 feet above groundwater.
- Fencing will be installed in accordance with building code and board of health regulations
- all lighting will be shielded, downward lit, and limited to what is required by building code.

- Pool and patio area will be enclosed by dry-laid stone wall
- There will be no damage or disturbance to the land within the shore zone.
- Water for pool will come from on-site well.
- Pool will be salt-water treatment or equivalent
- No pool cabana is proposed.
- Mechanical systems for pool will be located inside house.

It was MOVED by Searle SECONDED by Morrison

*To approve the application as presented, with conditions as follows:*

- *This special permit is not in effect until the applicant has filed a certified copy of the decision or certificate with the registry of deeds. A copy of same shall be provided to the Planning Board and Building Inspector. Any modifications to the plan shall require approval from the SPGA.*
- *The construction shall conform to the application considered and approved by the Planning Board, including all plans and documents submitted in support of same, and approved by the Planning Board.*
- *This special permit shall run with the land.*
- *Prior to issuance of a building permit, the above specified plans will be compared to the construction documents submitted to the Building Inspector for verification and correspondence. If the Building Inspector determines that there are significant differences, the applicant shall be required to apply for a Modification to this Special Permit.*
- *Substantial construction activity must commence no later than one year from the date of final action by the Planning Board.*
- *No construction activity will take place earlier than 7:30 AM or later than 7:30 PM, or on Sunday, or from June 15 through September 15.*

STANDARD CONDITIONS FOR SWIMMING POOLS

*USE and SAFETY*

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

*WATER*

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

*LIGHTING and ENERGY*

8. *Outdoor lighting is limited to that required by building code, and shall be fully*

*shielded, and directed downward. Mercury vapor lighting and bug zappers are prohibited.*

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

**COMPLIANCE**

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

*11. The responses contained within the Swimming Pool Special Permit Criteria Checklist shall become a part of this decision.*

*12. Copies of this decision shall be provided to the construction crew prior to the construction of the project.*

VOTED: 5, 0, 0.

**CHAIRMAN'S NOTES**

Mr. Mascolo made comments related to the previously proposed zoning bylaw changes, and suggested that, while the previously suggested changes may have been too quickly considered, changes to the Zoning Bylaw might be warranted.

There was various discussion related to development in town, the history of development.

It was MOVED by Mascolo SECONDED by Morgan

*To establish a Zoning Bylaw Committee to review the Zoning Bylaws.*

VOTED: 5, 0, 0.

**UPCOMING MEETINGS**

The next regular meeting was scheduled for March 24, 2020, 5:30 PM.

**ADJOURN**

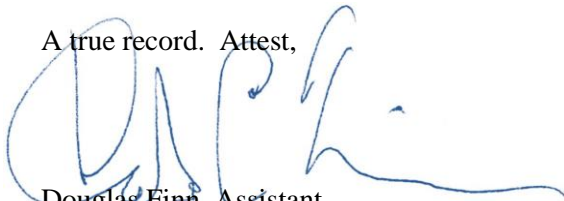
There being no further business, it was MOVED by Morgan, SECONDED by Searle

*To Adjourn.*

VOTED: 5, 0, 0.

The meeting was declared adjourned at 7:06 PM.

A true record. Attest,



Douglas Finn, Assistant  
Edgartown Planning Board