

# Edgartown Planning Board Minutes

Tuesday, August 6, 2019

A regular meeting of the Edgartown Planning Board was scheduled for Tuesday, August 6, 2019, at 5:30 PM at the Edgartown Town Hall, 70 Main Street, Edgartown, Massachusetts.

*PRESENT: Fred Mascolo (Chair); Michael McCourt, Lucy Morrison, Scott Morgan, Glen Searle, James Cisek (Alternate).*

*ABSENT:*

The meeting was called to order at 5:33 PM, and a quorum was declared.

## **SITE VISITS**

The following site visits were scheduled:

- 9:15 Am – 59 North Street (Verizon Wireless / American Towers, Inc.)
- 9:30 Am – 44 Edgartown Bay Road (Carty)
- 9:50 Am – 14 And 16 Baylies Way – Owen Norton LLC (Final Subdivision Inspection)

No deliberation was conducted.

## **SCHEDULED BUSINESS**

### **5:30 PM ADMIN. REVIEW: AMERICAN TOWER: INSTALLATION OF GENERATOR – 59 NORTH ST.**

In accordance with MGL Chapter 40A, Section 10, the Edgartown Planning Board scheduled a public hearing in the Town Hall, Main Street, on Tuesday, August 6, 2019 at 5:30 PM, on the request of Austin Cofrancesco, Transcend Wireless, on behalf of American Towers, Inc., Owner, related to administrative review and approval of a proposal to install a diesel-powered generator on a new 4' x 8' concrete slab within the existing compound.

The application was made in accordance with Section 13 of the Edgartown Zoning Bylaw. The property is located at 59 North St., Assr. Pcl. 29A-96. Copies of the application were made available in the Planning Office for public review.

No one was present for the applicant.

The public hearing was opened at 5:34 PM.

There being no one present to speak to the application,

Several board members expressed concern about the application, including matters of security, site access by emergency vehicles, and the choice to install a diesel-fuel powered generator instead of an LP (propane) powered generator; further, there were some questions as to the need for a third generator on the site. The chairman stated that he would prefer the board not take any action on the matter until its questions could be resolved.

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

*To continue the public hearing to August 20, 2019, 5:45 PM.*

**5:30 PM PUBLIC HEARING: SUBDIVISION -- (CONT'D FROM MAY 7, 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 board continued a public hearing on a Definitive Subdivision Plan proposing to divide 54.26 acres in R-20 residential district into 36 lots. The subject property is located at 139 Meetinghouse Way, East of Division Road (Henry's Path).

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

The public hearing was continued at 5:35 PM.

Presentation

Mr. Hoehn presented the board with a modified plan, showing significant revisions to the proposed subdivision. (Addendum A – attached to these minutes).

The new plan (dated June 22, 2019, prepared by SBH, Inc.) showed division of the property into 28 lots for detached homesites, a single site with a cluster of 10 “townhouse” dwellings, and more than 30 acres of contiguous open space that will be permanently preserved.

Mr. Hoehn described the process leading to this revision of the plan. Mr. Hoehn also described the intent of the plan.

- The 34 lots (as previously proposed) have been reduced to 28.
- The NHESP line has been largely left untouched (with slightly more than 80% left undeveloped). This will resolve most outstanding issues related to National Heritage preservation concerns.
- Total preserved space will be about 30.1 acres in total.
- The proposal has seen initial favorable review by the MV Commission in relation to their open space policy, with more than 60% of open space preserved.
- The proposal also provides for ten semi-detached ‘townhouse’ units, which should be priced well below market rate, with one townhouse (two dwelling units) built for every five lots sold. The Town house Units will be structured similar to affordable housing in Edgartown, with qualified buyers, limits as to resale price, owner-occupancy requirements. There will be no time limit as to ownership duration. Resale profit (Prior to the 25-year sunset term) must be returned to the Edgartown Affordable Housing Committee.
- Additionally, a cash donation to the Affordable housing committee will be provided with the sale of each lot.
- Each sale of any lot after the initial sale, will require a 1% donation to Dukes County Affordable Housing Commission, or similar.

Mr. Searle: Has the commission seen this?

Mr. Hoehn: Not formally as of yet. The LUPC will meet on August 19, to receive and review the proposal, and a hearing before the commission is scheduled for August 22. I'll be meeting with the Commission prior to that to firm up the details.

Mr. Hoehn also described the updates to the nitrogen calculations, which limits will be met through reduction of developed areas. The previous proposal suggested the use of a permeable reactive barrier (“PRB”); that method is no longer proposed, as more traditional methods should be satisfactory to meet the requirements set out by the MV Commission.

Mr. Morgan: re/ the Town Houses: if someone decides to sell one, will there be a requirement to sell to a qualified buyer? Or, what if the owner passes away?

Mr. Hoehn – we are still working on the details of how that aspect of this project will work, and don't have all

of those details as of yet.

Ms. Morrison suggested that she has seen ways to address those concerns in other projects. There was some discussion related to the possible options to keep the townhouse units protected as affordable housing for local residents.

Mr. Hoehn: The lots will be limited to five bedrooms. No guest houses will be permitted. A detached bedroom (over a garage) must be included in the five-bedroom count.

Mr. Morgan: Swimming Pools? Mr. Hoehn: We didn't restrict them; in our nitrogen calculations, we assumed that ½ the lots may have swimming pools, but those don't have an impact on nitrogen.

Mr. Finn reported that, as of this date, the board voting eligibility is 5 members (excluding Searle, including Cisek).

There was some discussion as to the technical process moving forward. The suggestion by Mr. Hoehn is that a meeting date in October as a continuance date would likely be appropriate.

Mr. Mascolo asked the board if they had comments about the project revisions.

Mr. Searle: This looks good to me.

Ms. Morrison: I think it's an improvement.

Mr. Morgan: I think it's a BIG improvement from the previous plans. Has the commission seen the lot prior to this proposal? Ms. Morrison: Yes, several site visits.

Mr. McCourt: The applicant has obviously done a lot of work – it seems much improved. I commend the applicant for doing their best to make this work.

Mr. Cisek: This seems like a big improvement, given the townhouse units, and the consolidation of the open space.

Mr. Mascolo: I like the idea, but it seem socialistic. I feel like we've lost land rights. But, if it works for the developer... It seems like a shakedown. They've already offered more than anyone ever has. How are qualified buyers (of the Town houses) to be determined?

Mr. Hoehn suggested draft language included residency requirements and potentially local employment requirements, but also stated that the language was subject to ongoing review.

Given that the matter is still being reviewed by the MV Commission, with no decision anticipated before late September at the earliest, it was MOVED by McCourt, SECONDED by Morgan.

*To continue the public hearing to October 15, at 5:30 PM.*

VOTED: 5, 0, 0.

**5:45 PM FORM O – RELEASE OF LOTS – OWEN NORTON LLC (27-15.6, 28-249)**

The board received a request to release lots created as part of a definitive subdivision plan, proposed by Owen Norton LLC (Doug Hoehn, SBH, Inc. as agent), as approved by a vote taken and endorsed by the Planning Board on November 27, 2018.

Mr. Finn reported that completion of all electrical work on site has been certified by Electrical Inspectors for the Town (David Schwab, Mike Dolby). Roads have been completed in accordance with Subdivision Regulations, and so certified by Allan De Bettencourt, Highway Superintendent.

Mr. McCourt (to Mr. Hoehn): I commend the contractor and developer on the construction of the road. The work is excellent.

There being no further discussion, it was MOVED by Morrison, SECONDED by McCourt

*To endorse the Form O, releasing all municipal interests in the subdivision as outlined in the Covenant dated June 18, 2018, and approving the release of all lots created as part of this subdivision.*

VOTED: 5, 0, 0.

**5:50 PM REPETITIVE PETITION: GARY DAULA, 147 SOUTH WATER ST. (29A-19) (CONT'D FROM 7/9/2019)**

The board continued a public hearing from July 9, 2019, on a request From Mr. Gary Daula, for approval to submit a Repetitive Petition for a Special Permit to the Zoning Board of Appeals for the removal and replacement of an existing dwelling.

Previously, the Board had requested an updated site plan, and had expressed concern about third-floor dormer, and overall massing.

Mr. Finn read a letter, received on August 6, 2019, from Mr. Daula, requesting a continuance to August 20, 2019.

There being no further presentation, it was MOVED by Searle, SECONDED by Morrison

*To continue the public hearing to August 20, 2019, 6:00 PM.*

VOTED: 5, 0, 0.

**6:00 PM SPECIAL PERMIT: 32 OCEAN VIEW AVENUE REALTY TRUST (29-137)**

The Edgartown Planning Board continued a public hearing from Tuesday, June 18, 2019 at 6:00 PM, on the request of Doug Hoehn, SBH, Inc., on behalf of 32 Ocean View Avenue Realty Trust, Owner, for a special permit to construct a garage / pool house on a pre-existing, non-conforming lot in the inland zone of the coastal district. The application was made in accordance with Sections 5.1.D.2 and 10.1.G of the Edgartown Zoning Bylaw. The property is located at 32 Ocean View Ave, Assr. Pcl. 29-137. Copies of the application are available in the Planning Office for public review.

*Present for the applicant: Mr. Don Sullivan (owner); Mr. Doug Hoehn (SBH); Mr. Chuck Sullivan (Sullivan Architects), Mr. Jason Brickman (Speedwagon Partners, Bedford, Massachusetts).*

The chair continued the public hearing at 6:11 PM.

Prior to reopening the public hearing, Mr. Mascolo asked all present to address all comments only to the chair, and not to engage in crosstalk, in order to maintain decorum and useful communication.

Presentation

Mr. Finn read an opinion from Town's Counsel Michel Goldsmith, dated July 3, 2019, in regard to enforcement action available to the board regarding the Special Permit for a Swimming Pool, issued to the applicant by the Board on September 18, 2019. (Goldsmith letter is including in project file).

Mr. Don Sullivan: In my opinion, I believe that the pool house has already been approved (September 2018). However, we have pursued this process at the request of the town nonetheless. I believe that this project should be approved based on the merits of our proposal: our project is similar to other projects previously approved by the Planning Board. Our project and our proposed use are in keeping with other similar structures and uses in the area. Further, I believe that the proposal will not be detrimental to the neighborhood.

There was some discussion related to an easement allowing access along the north-west lot line between the Reilys and the Sullivans. Mr. Sullivan stated that the easement has been confirmed by survey, and will remain accessible to those with a right to use it.

Mr. Sullivan expressed his concern that the board, previously, had seemed ready to vote against the project, but asked that he attempt to negotiate with the neighbors one more time in order to come to a satisfactory compromise. Mr. Sullivan expressed his willingness to accept such conditions as the board might see fit to impose as a requirement for approval. Mr. Sullivan stated that, after the previous planning board meeting, he had been approached by Mr. Reily, with an offer to purchase his property outright, an offer that he refused. Mr. Sullivan also stated that the retaining wall for the driveway (currently in place) is lower than initially proposed, and is lower in elevation than the abutter's house or back patio.

Mr. Sullivan concluded by asking the board to hold its vote, to “tune out the noise” that has been raised throughout the review process, and to judge the application on its merits.

Mr. Mascolo asked for other comments.

Mr. Bo Reily addressed the board, asking that a letter from Catalina Trust (dated August 5, 2019) be read into the record. (Letter from Catalina included in project file)

Mr. Mascolo asked about the details related to Catalina’s objections (or otherwise). There was some confusion as to the matter related to Catalina trust’s opinion on the proposal.

Mr. Reily began a presentation. (See “2019-0806 – Submission from Reily” – folder included in project file)

Mr. Reily: presenting a copy of the site plan as presented in September, 2018.

Mr. Mascolo reiterated that the Planning Board does not generally have authority to review and/or approve driveways or tree removal.

There was some discussion related to a different application previously reviewed by the Planning Board. Mr. Mascolo outlined that process and described it as a separate issue.

Mr. Reily continued, presenting a site plan that was submitted to the Planning Board in May 2019, comparing it to a site plan from September, 2018. Mr. Reily reviewed the criteria of the Zoning Bylaw related to review of such applications.

Mr. Mascolo spoke at length related to the tone and attitude of all members of the public, and again requested that all participants remain civil.

Mr. Reily: stated his belief that the development could not be approved based on the criteria, and presented some supporting information.

Mr. Reily asked about the research that Mr. Finn had done for Mr. Sullivan. Mr. Finn clarified that he worked only for the planning board. Mr. Mascolo affirmed that fact. Mr. Reily stated that he knew that Mr. Finn had done research on other lots that had similar structures, uses, or non-conformities. Mr. Finn presented a summary of his research of the Town’s Assessor’s records. (See Project file: “2019-0610 – STAFF WORK – other non-conforming structures in area.pdf”)

Mr. Reily: We had a discussion with Mr. Sullivan and his builder; we were shown an idea of a plan. I wanted to show him my idea; as soon as that was sent, Mr. Sullivan shut off communication, and withdrew his compromise plan.

Mascolo: We tried to work it out, and we got to an impasse.

Mr. Reily: I was trying to work with him – but my one idea was rejected immediately.

Mr. Reily presented a drawing showing an estimate of the property line (submission from Reily, in case file). Mr. Reily spoke briefly about an easement.

Mr. Sullivan confirmed that a 10-foot wide easement, straddling the common boundary, has been preserved.

Mr. Reily stated that, historically, the easement area between the lots has flooded regularly, and has never been able to support growth of trees. The trees on the Sullivan property had historically provided visual screening for both properties. Mr. Sullivan’s proposal reduces the potential for visual screening.

Mr. Mascolo asked if Mr. Sullivan’s proposal to provide a fence along the driveway retaining wall, and the installation of large trees, shrubs and understory, would not be acceptable to provide screening.

Mr. Reily: I thought my plan was better. I could show you my plan.

Mr. Mascolo: Does your plan move the driveway?

Mr. Reily: The proposed cabana and garage is “at over 40 feet tall”, the proposed structure would be too large to be sufficiently screened.

Mr. Chuck Sullivan (Architect for Don Sullivan) stated that the garage at the highest measurable point would

be less than 23 feet, and was roughly 21.5 feet tall from mean natural grade.

There was some crosstalk and disagreement about the height of the proposed structure.

Mr. Mascolo: What I'm trying to do is save everyone some money and time, and I still hope that there's some small chance that everything can be worked out. That's my hope. I will listen to everything that is said, and I will let the board determine based on their own opinion. But if Mr. Sullivan screens the garage, would that be acceptable?

Mr. Reily: He can't sufficiently screen the garage.

Mr. Jason Brickman (builder for Mr. Sullivan): The landscape architect generated some images showing estimated renderings of the finished wall, garage and landscaping; those were submitted to the board. (In Project File: 2019-0614 - EXHIBIT - Sullivan – Dropbox).

There was some examination of a photo provided by Mr. Reily of the Retaining wall in place. Mr. Reily stated that the images he provided were a basic mockup.

Mr. Searle: Regarding the image of Mr. Reily against the poured concrete wall: how far up the wall will a car be?

Mr. Jason Brickman (Builder) stated that the wall is measured from the pre-existing average grade; the wall at the point identified by Mr. Reily. There was discussion back and forth related to the reveal of the concrete wall once site grading was concluded.

Mr. Reily: This is a Trump-like wall. This is huge. There's no way that this can be screened. Donaroma confirmed this. There will be no way to buffer the project; it's not possible to put a 50-foot tree in an area that has such a wall.

Mr. Mascolo: Who is the landscape architect? Mr. Sullivan: Tim Lee.

Mr. Mascolo: Do we know where planting will be in relationship to the wall? Mr. Sullivan: It's on the landscaping plan.

Mr. Reily: Any landscaping in front of the wall will be in the easement area. He has placed this wall as close as he could to the easement area; there is no way to put plantings in front of the wall without blocking the (10-foot) easement.

There was considerable back-and-forth related to the timing of the retaining wall construction.

Mr. Mascolo: In this kind of situation, nobody wins. If this goes to court, it does not matter who wins - you still have to live with each other.

Mr. Reily: I know, and I still have to deal with his headlights coming into both my houses.

Mr. Mascolo asked Mr. Doug Hoehn as to the earlier proposal about placing a fence along the driveway to prevent headlight glare from intruding onto the abutting property. There was some crosstalk related to the matter, with no clear answer offered.

Ms. Caroline Reily stated that the applicant had not budged on their plans until one weekend before the last hearing. Ms. Reily talked about the history of the land, the development of the gardens, the use of the property by non-profits for fundraisers... they (the Reilys) have been generous benefactors to numerous conservation boards and societies on island.

Mr. Mascolo: That's not material to the matter at hand. What we're dealing with is the application in front of us.

Ms. Reily: This part of our right – to negotiate it. They said that this is going to be covered – this is going to be impossible to cover. Who can imagine that you can get coverage on concrete? It's completely wrong. At every level. This board needs to send a message to everybody -

Mr. Mascolo: The board needs to make a decision based on...

Ms. Reily: -- that you are not going to allow everybody to misrepresent –

Mr. Mascolo: Please don't speak over me. I understand that you're upset. I understand what you're trying to convey. Just speak in a normal tone, and say what you need. Please continue.

Ms. Reily: I think that it's crystal clear, that the applicant did not submit a grading diagram that was required.

Mr. Sullivan: That's not true...

Ms. Reily: We have asked to see if the grading plan was in the file, and it is not there. Mr. Sam Sherman (former board chair) confirmed that the previous pool special permit was not approved with the grading plan in mind. They have confused the lingo. I believe this board needs to send a message. I believe that you should deny the request for this variance, since the previous application was deficient (by the absence of a grading plan), and that it should be rejected as a result. I have deep appreciation for what you do, and what previous planning boards have done. This is one of the most beautiful towns in this country, because of the efforts of the town to preserve it. We reviewed the application previously. We did not want to deny them their house, their pool or even their pool cabana. But we had no idea that the lot would be radically landscaped, or the driveway moved. I too believed that we could come to a conclusion – that's why we put in a counter-offer. We believe that this lot isn't being developed properly. They're taking a 'Google-map' approach, looking at a lot from overhead, and not developing it with sensitivity to the history and surroundings.

Mr. Brickman: Two Corrections: This is not a variance, but a special permit. Mr. Sullivan is not a developer, but a home-owner.

Mr. Sullivan: Third: to clarify – our proposal for modification was rejected; the Reilys rejected it. They countered with a proposal that was unacceptable to us, so we rejected theirs.

Mr. Chuck Sullivan: The site plan that was described as 'undisclosed grading diagram' is in the conservation commission files, and was available through that public notice and public hearing process. That plan was updated and brought to the Planning Board meeting in September. (Staff note: the plan is not in the Planning Board file.)

Mr. Mascolo asked about the modified site and landscaping plan offered by the Sullivan's as a compromise proposal.

Mr. Sullivan: Our proposal for a modified plan was rejected by the Reilys. Their counter-offer was unacceptable to us.

Mr. Chuck Sullivan (Architect) presented a copy of plan that was presented to the conservation commission in August 2018 (see 2018-0816 – Illustrative Site Plan – in Project File)

Mr. Chuck Sullivan: The reason for the location of the pool and the cabana was to maintain the existing septic system. When we first considered a compromise, the house was already framed with electric and utilities being installed. A modified plan (moving the pool cabana) was presented later, in order to accommodate the work on the septic system, and as a proposed compromise that allowed for more screening to the abutters.

The chair reviewed the plan presented by Mr. Sullivan. (See application file, 2018-0816 – Illustrative Site Plan, submitted on 2019-0806)

Mr. Don Sullivan reiterated his efforts to propose a modified plan that allowed for more screening on the north and west side of the lot, and the Reilys response. Mr. Sullivan stated that the response consisted of a rejection and an alternative plan proposed by the Reilys which was "the complete opposite" of the modification.

Mr. Chuck Sullivan: To move the driveway to the south would put a parking area between the pool and the house, and which would interfere with views of the harbor and other aspects related to outdoor use on the lot.

Mr. Sullivan reminded those present that they were to speak only when recognized.

Mr. Mascolo (to Mr. Sullivan): Are you moving ahead with the original plan? Mr. Chuck Sullivan – the original plan. The retaining wall has been poured.

Mr. Mascolo again compared the compromise plan to the original proposal.

Mr. Mascolo asked which plan was being proposed. Mr. Sullivan clarified that the plan presented in May (see application file, GRADING DIAGRAM and PLANTING AND LIGHTING DIAGRAM, panels L1 through L4, prepared by Timothy Lee Landscape Design, dated 5/22/2019)

Mr. Reily agreed that the proposal was focused on the original plans as submitted by the applicants with the application.

Mr. Sullivan reiterated his negotiation process.

Mr. Mascolo repeated his question as to which plan was being proposed.

Mr. Sullivan confirmed that his initial submission was the submission that he would like to proceed with. (see project file: 2019-0528 – PLAN\_ Floorplans and Elevations; 2019-0528 – SITE PLAN – L1 through L4), 2019-0528 – APPLICATION; 2018-0818 – PLAN – Grading Diagram)

Mr. Mascolo: Would you still be willing to agree to the modifications on the modified plan?

Mr. Sullivan: There is a chance.

Mr. Mascolo: (to Reily) is there a chance you would agree to the modified plan?

Mr. Reily: I know that plan. I'd like my plan to be considered, too.

Mr. Mascolo engaged the applicant and an abutter in a discussion about rights that a land-owner has to improve their property.

Mr. Mascolo: I'm getting that there's a chance that this might provide a solution for everyone. Is that the case? I'm trying to save both parties a lot of frustration, and a lot of legal expense.

There was some back-and-forth related to the two different plans, the opinions of various landscaping options.

Mr. Mascolo: Given that the existing wall in place, could the modified plan be implemented still?

Mr. Don Sullivan: It could – the wall that's been poured could be used as a terrace wall, with another section of wall; poured further back on the lot.

Mr. Chuck Sullivan: It's possible that the existing wall could be cut to serve as a stepped retaining wall...

{A brief recess was called due a technical problem...}

Mr. Morgan: I want to be clear on this. The request is for a special permit to build a structure on a pre-existing non-conforming lot. This isn't about negotiations between the neighbors. This is our decision as to whether we're going to allow a structure on a pre-existing non-conforming lot. We've already determined that we don't have control over trees or the location of the driveway. The application is for a structure -- a building, not a driveway.

There was some discussion related to efforts to clarify the intent of the application, and scope of review by the Planning Board.

Mr. Don Sullivan asked that the board close the public hearing and conduct a vote.

Mr. Mascolo (to Mr. Reily) Mr. Sullivan stated that he would be willing to accept the modified plan if it would lead to an approval. Is that unacceptable to you?

Mr. Reily: I'm not ready to make that agreement right now.

Mr. Don Sullivan: We are not willing to make that compromise. Please vote.

There was confused conversation between the parties in regard to previous attempts to negotiate a solution.

Mr. Mascolo: It's become obvious to me that there is no compromise to be made tonight. We tried to negotiate and come to some common ground. I don't believe that the abutters have the rights they think they do to control what the applicant can do on their own property. I wish that both parties were able to work it



out. Evidently that's not the case. I have heard opinions, and I know the board has the right to vote as they see fit. Am I correct? Or, is there a long shot that this might work?

Mr. Mascolo: (To Mr. Reily) You're saying that there's no way to make this work, then?

Mr. Reily: Not in the next six minutes.

There was crosstalk conversation the between Mr. Don Sullivan, the Reilys, Jim Brickman, and the chairman.

Mr. Jason Brickman: There has previously been a great deal of discussion related to the 'pinch point' in the retaining wall, which we addressed in the modified plan (rejected by the Reilys). We talked about going from eight feet to twenty feet to allow for far more natural screening. We talked about adding a wooden 'parpaet' wall, to be placed on top of the retaining wall to prevent headlights from shining onto the neighbor's property. We talked about allowing the Reilys to be included in the process for picking species for the natural screening. All those things were discussed. Having a decision maker in that process, was clear. The move of the driveway to the opposite side of the lot was not on the table for us.

Mr. Reily: you rejected my offer for a counter plan – I don't have rights on the applicant's property, but I do believe in the rule of law.

Ms. Reily: To be clear – we are voting only the new building?

There was additional crosstalk. Mr. Mascolo again warned against speaking out of turn.

Ms. Reily: by pouring the concrete wall, their new plans have been set in stone.

Mr. Mascolo: That's not true – they have offered to still go with the modified plan, and you won't accept the project.

Mr. Don Sullivan: We have offered to still consider the modified plan – a second wall, a reduction in the height of the first (existing) wall, in order to create a tiered landscape that would provide for more natural screening, and help to better manage water flow on the site. It's mind boggling to me as to why the neighbors didn't accept this compromise plan when it was done. I didn't want to do it when my builder suggested it. I still don't want to do it. But if agreeing to the modified plan would make the proposal acceptable to you, then I'm willing to do it.

Mr. Chuck Sullivan: Just to be clear: The modified plan would require the existing wall to be cut down so that it sits no more than two feet above natural grade, with stone veneer as proposed. Lower shrubs on downhill side; larger planting on uphill side, with a second retaining wall above those; the lower retaining wall would protect the larger plants from flooding or intrusion of saltwater during storm events.

Mr. Reily: I am not here to talk about walls, driveways; I am here to talk about precedent you set on Martha's Vineyard. There are other properties in this neighborhood that will be subject to this new precedent.

Mr. Mascolo: This is not a new precedent, this has been going on for a long time. Everyone has a right to make the best of what they see fit for their own property. This proposal has been in the purview of the building inspector, the Conservation Commission and here.

Mr. Mascolo: Look: I know he (indicating Searle) is voting no, I know he (indicating Morgan) is voting no; I don't know how the rest of the board is voting, so... (to Reily), you've won. Alright? You're going to fight it out in court, and we'll see what happens. What more do you want from us? You're not going to kill us with all this tension. We've tried to come to a compromise – cutting down the existing wall, adding a second wall, moving the pool 28 feet, moving the garage 20 feet, and none of this is acceptable to you. So let's just have our vote, and you guys can get your lawyers and go to town.

Mr. Mascolo: In 18 years of doing this, I have never gone to this extent to try to reach some compromise. For the first time, I thought there was hope for a compromise, but it's not going to happen.

Mr. Mascolo: I'll ask you one last time: Will this compromise plan work for you? Mr. Reily stated that he was not prepared to agree to the plan. There was additional discussion related to the proposed modified plan, landscaping details. There was extensive argument between the Reilys and Mr. Chuck Sullivan, related to the potential to reduce the size of the existing wall, the types of plantings that could be used, the viability of

plantings placed near concrete structures.

Mr. Mascolo: Are we going to work this out here, or not?

Mr. Reily stated that his plan suggested multiple structures instead of one structure.

Mr. Mascolo: Where would he put these additional structures? Mr. Reily: It's up to him, it's his land.

There was additional confused conversation related to the height of the proposed structure, the proposed landscaping, and other details. Mr. Mascolo attempted to describe the modified plan to the Reilys, and illustrate the subjective differences between the two.

Mr. Mascolo asked Mr. Reily for a final decision on the matter. Mr. Reily asked if he could twenty-four hours to decide. The chair declined the request. Mr. Reily stated that he was not prepared to agree to the modified plan.

It was MOVED by Mr. Searle, seconded by Morgan

*To close the public hearing.*

VOTED: 3, 2, 0.

The motion passed, and the public hearing was declared closed at 7:35 PM.

### Deliberation

Mr. Searle: I have two opinions. I believe that the Reilys do not have the right to determine where their neighbors build or put things on their property. Second, this is a small lot. I know that the detached bedroom is going to be a guest house; I know it is. Right now, I'm not in favor of the proposal.

Ms. Morrison: The total square footage as proposed is more than was previously there, but I do not believe that the use will be more detrimental to the neighborhood.

Mr. McCourt: There's been a strong effort to try to resolve this – a lot of our time as a board. I'm disappointed – the abutters seem to – and this is just my opinion... There is a lot going on on a small lot, and I'm struggling with that. However, I would probably vote to approve.

Mr. Morgan: I'll say that this application was strictly for a building on a pre-existing non-conforming lot. It is not about Mr. Sullivan or Mr. Reily, it's just the facts. I do not know Mr. Sullivan; I do know the Reilys, because they have been here for so long... I don't hang with them or anything... However, I'm try to strictly go with what they're trying to put on a small lot. What I would rather have seen is the rule that when you build a house, you have a five-year wait before a guest house could be built. I was told this was going to be a detached bedroom; since then I've heard it called a detached bedroom, cabana, a pool house. In my opinion, a two car garage, with a living room bathroom, bedroom, laundry, bar sink; to me that's a guest house. And I just think that to allow this on a non-conforming lot, and it has to be more disruptive to the neighborhood, otherwise this wouldn't be our fifth meeting here discussing it... it HAS caused disruption. I just... going based on that, not based on personalities, opinions, landscape plans, or anything else ... I would vote against.

Mr. Cisek: I think that Doug has done a lot of work with the work in developing the conditions for the pool house, related to screening, he's got two pages of conditions that would make improve screening, and make it more presentable... and I think that what's going to happen is the Reilys are going to end up with worse conditions that the modified plan would have provided. That's my opinion.

Mr. Mascolo: I see this all the time on the harbor; that's why we pay so little in taxes, because everyone maximizes their lots; in doing so, that creates a higher taxable property value, which minimizes the tax burden for others people in town... I do not have an issue with the plan; I think that we came right up to the edge of the edge, for a workout here, and that we could have saved both parties tremendous heartache, and tremendous legal expense, but it doesn't look like we're going to head in that direction.

The chair then clarified that he could ask a question to clarify information that was presented.

Mr. Mascolo: (to Mr. Sullivan) are you willing to go to this plan [Timothy Lee site / landscape plan, dated

June 17] in order to do a ‘workout’ [to compromise]? Mr. Sullivan: I think I made that clear, yes.

Mr. Mascolo (to Mr. Reily) are you willing to go to this plan in order to do a workout? Mr. Reily: I’m not willing or able to... not now.

Mr. Mascolo: OK.

Mr. Sullivan asked a procedural question about whether individuals had conflicts of interests? Had the board chairman determine that there were no conflicts of interests?

Mr. Mascolo stated that he had not determined anything, but he asked if all board members had taken the conflict of interest training [as mandated by state law, and offered by the Massachusetts State Ethics Commission]. Board members assented.

Mr. Mascolo: There are no conflicts of interest?

Mr. Morgan disclosed that his brother in law had previously worked as a caretaker for Bo Reily’s parents, Mr. Boatner Reily, (father to Mr. Bo Reily, present at the hearing).

Mr. Mascolo suggested that such information should have been disclosed at the beginning of the process.

Mr. Sullivan asked if any member of the board had “flown on the Reily’s personal jet”? Mr. George Brush (Attorney for the Reilys) asked if the public hearing was closed. There was confused crosstalk conversation, with discussion presumed to be related to whether a conflict of interest existed, or whether the information or questions being proffered was appropriate or not.

Mr. Mascolo: (to Mr. Sullivan) These are questions for Mr. Brush and your lawyer to find out. Unfortunately there’s not anything to do with us.

Mr. Morgan: To clarify: I have never had a financial interest or financial gain in the property, or with the Reilys.

Mr. Mascolo: No financial gain, or no member of your family has ever worked for either of the two parties?

Mr. Morgan: My brother in law had worked for the Reily’s parents, but not these Reilys here. I worked for my brother in law, but not the Reilys. That has nothing to do with me.

Mr. Mascolo: That should have been disclosed at the beginning, but it’s on record now. You’ve completed the ethics training and that’s all set? Mr. Morgan replied in the affirmative.

There being no further deliberation, Mr. Mascolo asked for a vote.

It was MOVED by Searle, SECONDED by Morrison

*To approve the application with specific conditions as follows:*

1. *Upon completion of all site construction, Applicant shall submit the following to the Building Inspector:*
  - a. *AS-BUILT ELEVATIONS of house and pool house.*
  - b. *A completed TOPOGRAPHIC PLAN, showing completed site grading and location of all structures on the site*
  - c. *OTHER MATERIALS as the Applicant may deem necessary to fully describe and illustrate the exterior appearance of all structures on the site.*
2. *In order to properly document and illustrate improvements on the site, Applicant shall provide PHOTOS (printed or in digital form) to the building inspector of the following:*
  - a. *completed pool,*
  - b. *pool patio,*
  - c. *Cabana/Garage,*
  - d. *outside shower,*
  - e. *upper parking area,*

- f. driveway looking toward upper parking area,
  - g. lower driveway,
  - h. garage door area,
  - i. walkway area along south boundary (maintenance access to south yard area).
3. Applicant shall prepare and submit to the Planning Board a covenant, with the Town of Edgartown as a named party, detailing a FIVE YEAR LANDSCAPE MANAGEMENT PLAN as follows:
    - a. Except as herein noted, Landscaping shall be constructed in conformity with a plan entitled "32 Ocean View Planting & Lighting Diagram", Panels L3 and L4, Prepared by Timothy Lee Landscape Design, 67 Baker Avenue, Lexington, MA 02421, dated June 17, 2019 ("the Landscaping Plan").
    - b. In order to confirm correspondence to the Landscaping Plan, Applicant shall permit a SITE INSPECTION, to be conducted by a vendor selected by the Planning Board. Site Inspection shall be at the convenience of the Town's vendor and the applicant, but must be completed within 30 days of completion of principal landscaping.
    - c. In order to encourage visual screening of all site activities from neighboring lots, Applicant agrees to generally maintain and improve the landscaping on the property.
    - d. Within 30 days of completion of principal landscaping, applicant agrees to provide to the Town:
      - i. A detailed maintenance schedule, including regular spring and fall maintenance tasks,
      - ii. A detailed irrigation system plan and irrigation schedule,
      - iii. A detailed fertilization schedule,
      - iv. A detailed replacement plan for failed plant specimens, including alternative species options.
    - e. The Landscape Management Plan shall have a five year term, non-renewable, which shall commence upon final completion of all work on the property.
  4. To prevent auto headlight glare from cars on the upper / east driveway from being directed across the north and west property boundary, applicant shall construct a WOOD FENCE ("Fence") as follows:
    - a. Fence shall be placed on top of the driveway 'retaining wall' along the north/west side of the driveway
    - b. Fence shall run from a point directly west of the north-west corner of the garage, to a point directly north of the north-west corner of the swimming pool.
    - c. Fence shall be centered on the top of the retaining wall.
    - d. Fence shall extend no less than 48" but no more than 72" above the level surface of the driveway.
    - e. Fence shall be designed to prevent light intrusion beyond the boundary of the property.
    - f. Fence shall continue to be maintained and repaired by the applicant as needed.
  5. Prior to issuance of an Occupancy Permit, Applicant will submit copy of ENGINEERED PLAN FOR DRIVEWAY RETAINING WALL, to Planning Board and Building Inspector.
  6. In order to confirm operation of integrated drainage systems, and overall structural condition, Applicant shall schedule INSPECTIONS OF THE

*DRIVEWAY RETAINING WALL by a qualified professional, as follows:*

- a. *First inspection shall happen on or about 12 months after issuance of the Certificate of Occupancy*
- b. *Second Inspection shall happen on or about 36 months after issuance of the Certificate of Occupancy*
- c. *Final Inspection Reports shall be submitted to the Edgartown Building Inspector and the Edgartown Planning Board for the town's records.*
- d. *If an inspection report identifies problems with the retaining wall structural condition or drainage system, Applicant shall submit to the Building Inspector a proposed Scope of Work to remedy problems. Proposed Scope of Work shall be due to the Town no less than 60 days from date of report.*

VOTED: 3, 2, 0.

The chair declared the motion as having failed, and the application was thereby denied.

**6:40 PM REQ. FOR DE MINIMIS DETERMINATION: FRED FOURNIER, 44 EDGARTOWN BAY ROAD**

The board considered a request for a “De Minimis” determination, received from Fred Fournier (Landscape, Inc.) for Mary and Brian Carty. The applicants have proposed a self-contained acrylic hot tub in a 10’ x 10’ square vault, 16” deep below grade.

Presentation and Deliberation

Mr. Finn stated that he believed that this would be the first time a hot-tub in the coastal district has been proposed as requiring Planning Board approval. Hot tub will be classified as a pool by Board of Health (for safety purposes), and will require either fencing or a secured locking cover, in accordance with Building and Health Codes.

Mr. Fournier was present on behalf of the applicant. Mr. Fournier presented photos of the site, to further illustrate the matter. Mr. Fournier stated that, historically, a hot-tub placed in the coastal district normally does not require a special permit. However, this was referred to the Planning Board due to the recess of the proposed tub into a ‘vault’ structure, placing it about 16-20 inches below natural grade. In his application to the board of health, the check-list items that applies to pools was completed; however many of the items were inapplicable to the proposed project.

Mr. Morgan: We were concerned, when this was proposed, that given a foundation might constitute a large construction or a larger disturbance.

Mr. McCourt: We did have concerns going in, but the site visit cleared up quite a bit of concerns for us.

Mr. Fournier: Originally the applicants considered a gunite tub, but chose instead to go with a self-contained unit.

Mr. McCourt: Is a fence required?

Mr. Fournier: Generally, a latching cover is sufficient; however, the Building inspector may require a fence, which we will install if need be.

There being no further presentation, it was MOVED by Morrison, SECONDED by Searle.

*That the application be considered de minimis, and proceed toward permitting.*

VOTED: 5, 0, 0.

**6:50 PM ANR : WILLIAM D PROVINCE IRRECOVABLE FAMILY TRUST AGREEMENT NUMBER TWO (12-34)**

The Planning Board received and considered a request for endorsement of A Plan Believe Not to Require Subdivision Approval. The plan was prepared by Reid Silva (VLS), on behalf of The William D. Province

Irrevocable Family Trust Agreement Number Two (Owner). The property is located at 12 Trapps Pond Road, Assessors Parcel 12-34.

*Present for the applicant: Mr. Reid Silva (Vineyard Land Surveyors).*

### Presentation and Deliberation

The Plan was reviewed.

Mr. Silva: previously (2007?) the plan was presented to the board for discussion. An existing house on Trapps Pond has been in place since prior to adoption of the zoning bylaw. The proposal will create a lot around the existing house, with frontage on Beach Road, as well as two additional buildable lots accessed by and with frontage on Oakdale Drive.

Both accesses are either public ways, or ways in existence that predate the Town's zoning bylaw.

There was some discussion related to the history of development on the lot. There was discussion related to a parcel that intrudes into the parcel, used as a septic site for the lot. There was some discussion related to potential septic-system locations for the new lots.

Ms. Morrison: Will the septic system on that lot create issues for the two new lots to be created? Mr. Silva: Likely not.

Mr. Cisek: What will the bedroom count be? Mr. Silva: Perhaps four, perhaps five. Septic design and locations have not yet been conclusively determined. There was some discussion related to the minimum distances between septic systems, and between septic and wells.

Mr. Finn confirmed the criteria for an ANR plan, and advised the board that the plan as proposed appeared to meet the requirements for endorsement.

It was MOVED by McCourt, SECONDED by Morgan

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

VOTED: 5, 0, 0.

## **ADMINISTRATIVE**

### **REVIEW AND SIGN PAYROLL**

Payroll for the period ending August 6, 2019, was reviewed and signed.

### **OTHER CRITICAL BUSINESS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE**

### **SCHEDULE OF UPCOMING MEETINGS**

Meetings were tentatively scheduled for August 20, September 3 and 17, October 1 and 15.

### **OTHER MATTERS**

A draft agenda for the August 20, 2019 meeting was distributed.

A letter from Ms. Katrina Nevin, in regard to traffic on Chase and Pinehurst Road, was distributed to board members.

Mr. Morgan clarified his statement concerning his past association with the Reilys. Mr. Morgan stated that he had never "flown on the Reily's jet", nor worked for the Reily's, or even worked on their property. Mr. Morgan confirmed that he had worked for Dolby Electric, and had been paid by Mike Dolby, and that Mr. Dolby had at one time been caretaker for Boatner Reily, the father of the current owners / abutters to 32 Ocean View Avenue.

Mr. Mascolo advised that any information that might be construed as potentially causing a conflict should be disclosed in the future at the beginning of a public-hearing process, in order to avoid confusion later on.

Mr. McCourt: The best guide is your conscience. If you feel your past experience might sway your decision,

then pay attention to that.

Mr. Finn thanked the board for their work on the 32 OVA application, and their continued support.

**ADJOURN**

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

*To Adjourn.*

VOTED: 4, 0, 0.

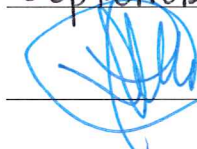
The meeting was declared adjourned at 8:13 PM.

Respectfully submitted,

Douglas Finn,  
Administrative Assistant


APPROVED by vote of Planning Board  
at a regular meeting, held on

September 3, 2019  
(Date of vote)

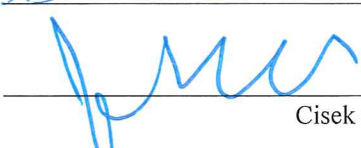
  
Mascolo

\_\_\_\_\_  
McCourt

Lucy L. Morrison  
Morrison

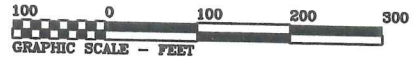
  
Morgan

Alan Searle  
Searle

  
Cisek (alternate)

**ADDENDUM A:  
2019-0806 - PLAN As Submitted by SBH  
Re/ Meetinghouse Way LLC Subdivision of Land**





Perimeter Area = 54.3 ac - 0.8 ac Roadway Easement =  
53.5 ac of effective perimeter area

**NHESP**

NHESP Priority Habitat Area	25.2 ac
Protected NHESP Priority Habitat Area	21.9 ac
NHESP Priority Habitat Area subject to potential development	3.3 ac (less than 5 ac take threshold)

**Open Space**

NHESP protected open space	21.9 ac
Association protected open space	9.2 ac
<b>Total open space</b>	<b>31.1 ac</b>

58% of effective perimeter

**Area Summary**

Open Space	31.1 ac
"A" lots (32,894 sf± average)	12.1 ac
"T" lot	1.4 ac
"B" lots (25,098 sf± average)	6.9 ac
<b>Total area of lots</b>	<b>20.4 ac</b>

**Road Right of Way**

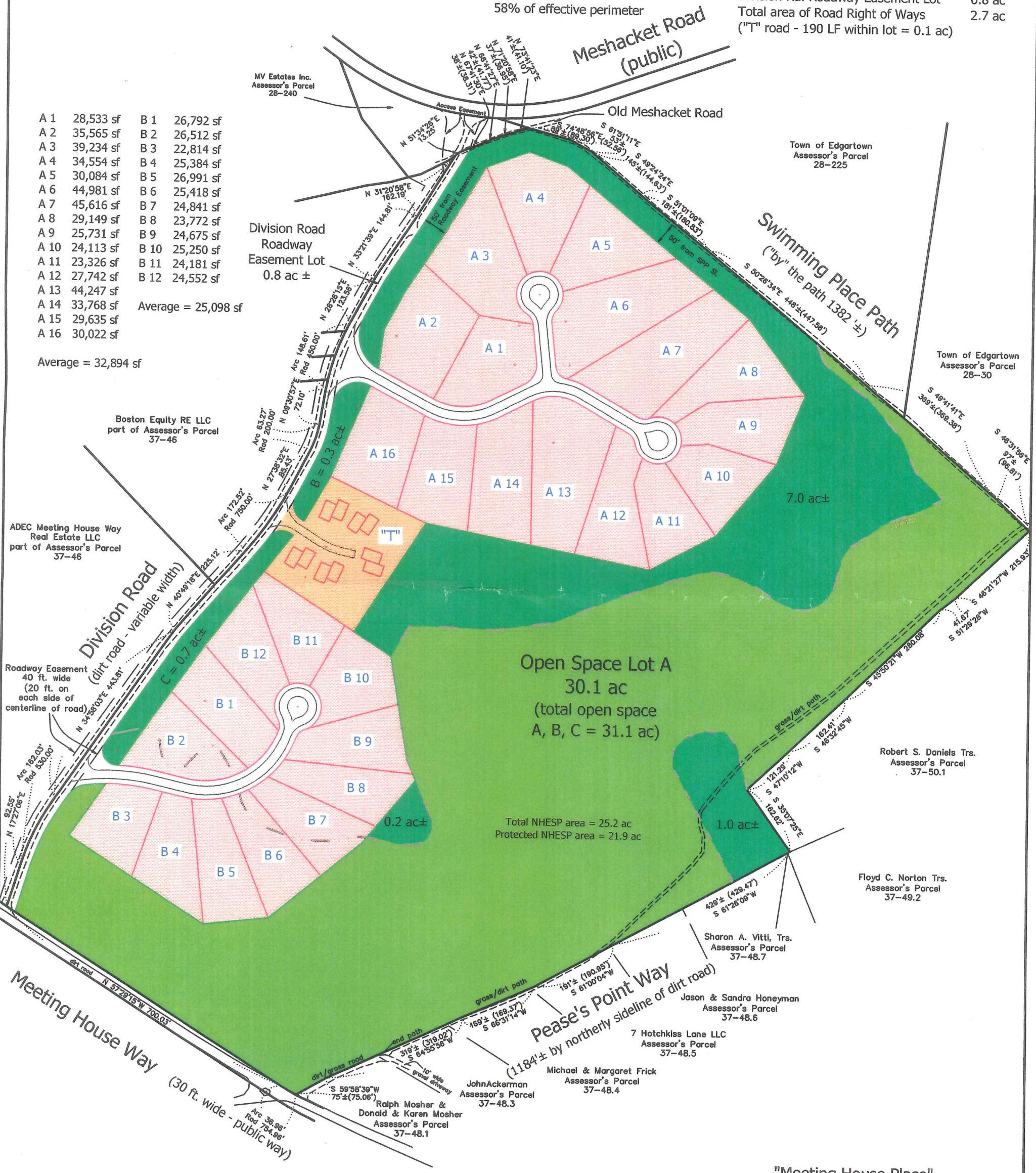
"A" way - 1,260 LF	1.2 ac
"B" way - 740 LF	0.7 ac
Division Rd. Roadway Easement Lot	0.8 ac
<b>Total area of Road Right of Ways</b>	<b>2.7 ac</b>

("T" road - 190 LF within lot = 0.1 ac)

A 1	28,533 sf	B 1	26,792 sf
A 2	35,565 sf	B 2	26,512 sf
A 3	39,234 sf	B 3	22,814 sf
A 4	34,554 sf	B 4	25,384 sf
A 5	30,084 sf	B 5	26,991 sf
A 6	44,981 sf	B 6	25,418 sf
A 7	45,616 sf	B 7	24,841 sf
A 8	29,149 sf	B 8	23,772 sf
A 9	25,731 sf	B 9	24,675 sf
A 10	24,113 sf	B 10	25,250 sf
A 11	23,326 sf	B 11	24,181 sf
A 12	27,742 sf	B 12	24,552 sf
A 13	44,247 sf		
A 14	33,768 sf		
A 15	29,635 sf		
A 16	30,022 sf		

Average = 25,098 sf

Average = 32,894 sf



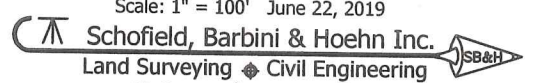
- Notes:**
- The address of the property that is the subject of this subdivision is 139 Meeting House Way, Assessor's Parcel 37-47, 54.3 acres ±.
  - CB F = concrete bound found  
SB F = stone bound found
  - |  |                                     |
|--|-------------------------------------|
| <span style="display:inline-block; width:15px; height:15px; background-color:#90EE90; border:1px solid black;"></span> | = NHESP Protected Open Space Parcel |
| <span style="display:inline-block; width:15px; height:15px; background-color:#3CB371; border:1px solid black;"></span> | = Association Open Space Parcel     |

"Meeting House Place"

**Plan of Land in Edgartown, Mass.**

Prepared For  
**Meeting House Way, LLC**

Scale: 1" = 100' June 22, 2019



**Schofield, Barbini & Hoehn Inc.**  
Land Surveying • Civil Engineering  
12 Surveyor's Lane, Box 339  
Vineyard Haven, Mass.  
508-693-2781  
www.sbhinc.net  
MV 9969

PUBLIC MEETING SIGN-IN SHEET

MEETING DATE: AUGUST 6, 2019

Name (Please print legibly!)

Street Address

Agenda Item

Name (Please print legibly!)	Street Address	Agenda Item
Caroline Reilly	35+39 <sup>26</sup> Ocean View Green Hollow	32 Ocean View Sp
Bo Reilly	" "	" "
Dee Nugent	22 Edgerton Bay Rd	
Gary Blum	32 Ocean <sup>459 St. Rd</sup> <sub>W.T</sub>	32 Ocean View Sp
Veronica Lundgren	35 Green Hollow	32 Ocean View Sp.
Judy Hurd	35 Green Hollow	32 Ocean View Sp.
William C. Bell	35 Green Hollow	32 Ocean View Ave
Katherine Sny	35 Green Hollow	32 Ocean View Ave
Pamela Bryan	35 Green Hollow	32 Ocean View Ave
JT Hurd	47 DARKWOODS RD	EDGERTON BAY ROAD