

Edgartown Planning Board Minutes

Tuesday, January 30, 2018

A regular meeting of the Edgartown Planning Board was scheduled for Tuesday, January 30, 2018 at 5:30 PM at the Edgartown Town Hall, 70 Main Street, Edgartown, Massachusetts.

CALL TO ORDER

The meeting was called to order at 5:30 PM.

Call of Roll:

Present: James Cisek (Chair), Fred Mascolo, Michael McCourt, Sam Sherman, Lucy Morrison.

Also Present:

Georgiana Greenough, Planning Board Administrative Assistant.

Douglas Finn, Planning Board clerk

A quorum was declared.

SITE VISITS

- ~~9:30 AM 8 Armstrong Lane (Chappy)~~
- ~~10:15 AM 3 Mariners Way (Brennan/Mariners Way LLC project)~~

There were no site visits.

BOARD BUSINESS

5:30 PM Discussion – William & Linda Ogden, 8 Armstrong Lane (30-21) Handicapped gentleman unable to reach dock from house. Requests a funicular from the top of the bluff to their boathouse & dock for accessibility reasons. (Chris Alley, SBH or Greg Ehrman, Hutker)

Present: Tony Bene, from Hutker Architects, Inc, on behalf of the owner.

Mr. Bene described the project. The owners wish to provide handicapped access to their dock through the use of a funicular. The company that will be developing the installation is "Hill Hiker".

Mr. Bene presented plans for the funicular, and explained the design. The construction will be galvanized steel, and will withstand exposure to salt water. The proposal is to have the funicular anchored at top and bottom, but is not expected to contact the slope of the bluff.

Mascolo: Is this enough for him to get to his boat? Answer: Yes.

Mr. Bene described that the existing unused tank depicted on the plans will be removed as part of the project. No conversation with the Conservation Commission has occurred as of yet.

The slope of the funicular will be about 34 feet in rise, over about 68 feet of track.

The funicular is expected to travel along an already-cleared way, so impact to vegetation is somewhat minimal. Mr. Bene also presented images of similar installations.

Chris Horiuchi will be working on the project's landscaping work.

The expectation is that the device will serve Mr. Ogden only.

The installation should not add lighting. Noise from an electric motor is the only source of sound expected.

Mr. Mascolo suggested that the applicant return with Conservation Commission approval, and an up-to-date design. Mr. Cisek suggested a site-visit be conducted.

Mr. Bene was thanked for his time.

5:40 PM Discussion – 3 Mariners Way LLC (21-34.223) SP: Project approved in January 2015: Ownership subsequently changed. Structure not built to approved plans and other violations of MVC and Planning Board decisions. (Larry Leahy, agent, et al)

No agent for the applicant was present. Mark Nicoterra (Former owner) and Sunny Brennan was also present.

Ms. Jay Swartz, an abutter to the project, spoke about the project. Ms. Swartz spoke about her observations, which she indicated suggests that the building is not being built in conformity with the approved plans.

Ms. Swartz is concerned that changes are being made in placement of windows, size and placement of doors, and roof layout.

Ms. Swartz stated that every corner of the building was to be 'stepped back' at least four feet on each side in all areas.

Ms. Swartz stated that the East side was supposed to have four windows.

Ms. Swartz stated that she had returned from Florida in order to bring her concerns to the board.

Mascolo: The building inspector should be the one to see that the building is constructed according to plan.

Ms. Greenough stated that the Planning Board is in receipt of a letter from the new builder, who is agreeing to adhering to the plan, and to building the project in compliance with the requirements.

Mr. Adam Turner (MV Commission) spoke in regard to the project. He suggested that the concerns are similar to the so-called "Wavelengths" project (B-II District, Upper Main Street), and that he advised that the board stay focused on the progress of the project.

Ms. Swartz asked about a plan for the current construction – does one exist?

Ms. Greenough read portions of a letter from Joseph Donovan, Mariner's Way, LLC, Boston Mass., dated January 25, 2018, and received by the Planning Board on January 25, 2018. (included herein by reference).

Ms. Greenough stated that the Building Inspector indicated that the letter should satisfy the board.

Cisek: I don't know how they can continue to work on a project that is approved.

Swartz: They have changed one portion that we are looking at right now.

Ms. Greenough stated that the building inspector has NOT issued a cease-and-desist order, but only issued an order to correct the major violations on the project.

Sunny Brennan (former owner), stated that Ms. Swartz is correct in her concerns, and that the design does NOT appear to be constructed according to plan.

Ms. Swartz suggested that the new owner / builder may not be aware of the conditions that have been applied to the project.

Ms. Greenough stated that Mr. Leahy has confirmed that he is aware of the conditions that have been placed on the project.

Ms. Greenough suggested that, in any communication with the builder or owner's agent, the Planning Board needs to be specific as it lists its concerns.

Mr. Sherman stated that he noticed roof trusses being placed today. He suggested the board needed to be 'stern, severe, and leave no options' when putting its concerns out.

Mr. Sherman suggested that a letter to the Building Inspector be written, recommending that he issue a stop-work order, clearly citing the violations, and copy the letter to the Owner and owner's agent.

Ms. Swartz described that some of the violations of the plan had been corrected.

Mr. Turner: updated plans should be requested. Further, the conditions for approval must be adhered to. Whatever is approved is what should be built – not negotiated after the fact.

Mascolo: Did the MV Commission receive the approved plans from the Planning Board?
Answer: Yes. Mascolo: So we're both on the same page.

Sunny Brennan: This is NOT my project – I do not want my name used to refer to this project.

All agreed.

Mr. Mascolo: the builder stated that he would comply with the original plans.

Ms. Swartz stated that they seem to be working on remedying some of the concerns. She further described that both the gable ends, and the dormers, appear to be as planned. However, doors and windows have not been corrected to adhere to the plans.

It was suggested that the planning board could issue a letter that requires that the plans be built according to specifications.

Ms. Greenough stated that the company has not provided other information in accordance with conditions of the special permit. Ms. Greenough stated that she would prefer the current

owner be asked to come to a meeting to address the concerns of the Planning Board in person.

Mr. Mascolo described the original permitting as a long, detailed process, and suggested that no variation on the final approved plan.

Mr. Sherman agreed, stating “we have approved plans, we have approved conditions, and that’s what should be done.”

Mascolo expressed his sentiments related to the letter to the owner: If the project is being built according to plan, then so be it; however, if there are variations to the plan that are anticipated, that work should be stopped until the applicant makes presentation to the Planning Board.

Mr. Cisek stated that any letter should address specific violations.

Ms. Swartz stated that she would like to be notified of ANY change to the project, whether a modification to the Special Permit, or a de minimis change, such as the previously approved de minimis change to combine two units into one.

The plan as presented in August as a de minimis change to the plan.

Mr. Mark Nicotera spoke to the de minimis request, and stated that the intention to the request was not to change the exterior of the structure, but simply to modify interior partitions only to combine two units into one.

Morrison: (to Nicotera) what version of plans where you looking at?

Nicotera: Chuck Sullivan drew up the initial plans.

Mr. Nicoterra stated that his expectation would be that changes might be made to the interior, but not the exterior. Mr. Nicoterra again stated that his de minimis request was not intended to alter the exterior.

Mr. Cisek stated his concern that plans as submitted and approved have been subsequently abandoned in favor of other plans that better suited the builder.

Ms. Swartz: We’re afraid that this is a pattern that will continue, and that the project will continue to deviate from the plans, or the conditions.

McCourt: This is a very serious matter. As a sitting member of the board, the Wavelengths project was difficult to undergo as a board member, and he would not like to repeat that experience. When the Planning Board makes a decision, he expects that it is followed through. “I don’t like [being in] this position, at all.”

Mr. McCourt also suggested that Wavelengths was well beyond the Planning Board, and that it was a project that underwent significant changes, with the final construction bearing no resemblance to the project as proposed or approved.

Mr. McCourt apologized to Ms. Swartz for having to bring this to the Planning Board’s attention, and expressed his concerns about the project.

Question: what authority does the Planning Board have over the project? Ms. Greenough explained the options to the board.

Mr. Mascolo asked if the MV Commission would work with the Town to see the project resume construction according to plan. Mr. Turner agreed.

Mr. Sherman stated that the Building Inspector should be directed to take action on behalf of the Planning Board.

It was MOVED by Sherman, SECONDED by Mascolo

That the Planning Board write a letter to the Edgartown Building Inspector, with copies to all parties, directing that he authorize only such work on the project as is necessary to restore the construction so that it complies with the original approved plans; that once that work is accomplished, that the Building Inspector conduct an inspection in order to insure compliance, and only then authorize the applicant to proceed with the project, and that the MV Commission be strongly encouraged to write a letter to the owner in support of this action.

VOTED: 5, 0, 0.

6:00 PM Continuation of AT&T/Fynbo to March 20, 2018. SP: Construction of 115' permanent wireless tower facility. Public Hearing Closed. (Exception: MVC Decision). Decision pending receipt of written, signed & recorded MVC decision. (Grossman, Anderson & Kreiger & Dan Bilezikian)

Ms. Greenough stated that the final written decision has not yet been received from the MV Commission, and recommended that the board table discussion and deliberation until receipt of same. It was noted that the Board has 90 days from closure of the public hearing to take final action on the application.

Ms. Greenough was asked to provide board members with the final decision from the MV Commission, once it's received.

It was MOVED by Mascolo, SECONDED by Sherman

To table deliberation on the matter.

VOTED: 5, 0, 0.

There was some discussion related to whether the Stop and Shop discussion could be moved to March 20, 2018, and whether the AT&T matter could be addressed on March 6. It was agreed to take the matter under advisement.

Recommendation to Selectmen of interim Planning Board member (three offers to be considered).

The board deliberated on three proposals selected by the Board of Selectmen for an interim appointment to the Planning Board.

Ms. Greenough introduced Scott Morgan, one of the individuals recommended by the Board of Selectmen to serve as interim appointment to the Planning Board.

Mr. Morgan introduced himself, and described his previous experience as a yacht captain, and his current position as chair of the Harbor Advisory Board. He stated that he currently

works at the PTA as facilities manager. He described his interest in working with the town; and had followed the Wavelengths project closely. As an electrician in the trades, he is familiar with reading plans, and is interested in working with, and giving back to the town. He stated that he is interested in running for the permanent position at the upcoming election.

Mr. Sherman stated that he assumed that Mr. Cisek was already appointed to the interim position, taking Robert Cavallo's chair until the next election. He stated that Mr. Cisek was elected as chair of the board, assuming that he would be serving until the election. Mr. Sherman also noted that Mr. Cisek is familiar with the current work of the Planning Board.

Mr. Sherman suggested that a letter be written to the Selectmen, stating that the Planning Board recommends Mr. Cisek as their choice to stay in his current position through April, with Mr. Morgan welcome to be appointed as the alternate through April. Mr. Cisek's participation is important in order to make quorum on significant projects currently before the Planning Board.

Continuation of Zoning Bylaw Amendments (from Dec. 16 and Dec. 23)

A public hearing was continued from January 23, 2018, related to Amendments to the Zoning Bylaw. The public hearing was declared continued by the chair at 6:50 PM.

Definitions: "Bedroom"

After discussion with the Building Inspector, staff recommended that the definition of Bedroom be omitted.

Mr. Sherman disagreed, stating that a clear and concise definition is important to professional designers and builders.

Ms. Greenough asked if the definitions as used by Board of Health, or Wastewater Commissioners, would not be sufficient for designers and builders.

Mr. Sherman reaffirmed that a clear, reliable definition was of great value to designers and builders, and suggested that the Planning Board keep the definition as written.

Mr. Cisek stated that he agrees – having a clear definition of a 'bedroom' is a good thing.

McCourt: the definition 'steers you in the right direction.'

The Planning Board agreed to keep the definition.

Definition: "De Minimis"

Staff reported that Town's Counsel expressed concerns about the inclusion of the definition. Ms. Morrison did not concur, stating that the definition seemed to be important, and that it does define a current practice of the Planning Office / Planning Board.

Mr. Veno asked about the use of De Minimis in practice. How is it used?

The process for use of a de minimis determination was described. Mr. Veno stated that he had never seen it used in a bylaw.

Mr. Mascolo suggested that the Board abide by Town Counsel's recommendation -- if counsel recommends striking the definition, it should be stricken.

Staff clarified that Counsel did not recommend removal, only asked about the purpose of the defining the term.

*** Ms. Morrison stepped out of the room.

Aside: Mr. Mascolo stated that he had been able to reach Mr. Leahy, and that Mr. Leahy was not aware that his presence was required at the meeting. Ms. Greenough stated that Mr. Leahy had received due notice of the agenda.

*** Ms. Morrison returned to the meeting.

After further deliberation, the board concluded that the definition for “De Minimis” will remain in its proposal. Staff will make formal inquiry with Town Counsel to determine whether the definition ‘passes legal muster’, prior to Town Meeting.

Gross Floor Area and Floor Area

The board discussed whether the two terms should remain in the definition section. Mr. Sherman suggested that Floor Area Ratio not be included, as it is not in the Zoning Bylaw.

The Planning Board agreed that the term “Gross Floor Area” will remain in it’s recommendation, as written; staff will compare the definition to 780 CMR, to insure compliance / concordance.

Fence and Boundary Fence

There was discussion related to the definitions for each, how they are used, and the enforcement / determination of what is a boundary fence.

Ms. Greenough suggested that the definitions were included to attempt to provide clarification for the general public.

Mr. Sherman suggested that the definition might be put into the “General Regulations” section, and more simply stated.

The staff will continue to research the two definitions, and provide further recommendations.

Vessel Service Facility

It was recommended that the word “Shorefront” be struck from the definition.

The Planning Board concurred.

Section 14.4.5 – “Prohibited Uses”

There was some discussion related to the proposed language. Mr. Bill Veno (MV Commission) stated that there was to be some input expected from the MV Commission. The section was tabled to the next meeting.

Proposed: Section 14.2 - Solar Photovoltaic Installations.

The new language was proposed as a way to provide broad latitude in considering ground-mounted solar energy installations and to offer the greatest options to the Planning Board.

Past projects were reviewed, with certain deficiencies discussed.

Ms. Greenough stated that this suggestion was recommended in order to provide some basic level of oversight and review of larger projects.

Sherman: Has Counsel seen this? Answer: No.

The section will be submitted to Town's Counsel for review and advice.

Recodification

The recodification has not changed. Mr. Cisek was requested to sign and date a document, which will be submitted to Town Clerk in order to provide public notice.

Additional Business

Other business not reasonably anticipated by the Board

There was no other business.

ITEMS NEEDING APPROVAL

The board received minutes from the January 23, 2018 meeting, and changes were recommended. A revised version will be distributed.

Ms. Greenough advised the board that payroll sheets would be ready for signature on February 6 and February 20.

There were no Decisions presented for signature.

NEXT MEETING

The next regular meeting was scheduled for Tuesday, March 6, 2018, at 5:30 PM.

ADJOURN

There being no further business, it was MOVED by Cisek, SECONDED by Mascolo




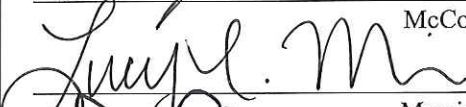

To Adjourn.

VOTED: 5, 0, 0.

The meeting was declared adjourned at 7:44 PM.

Respectfully Submitted,

Douglas Finn, Clerk

APPROVED by vote of Planning Board at a regular meeting held on	
<u>04/17/2018</u>	(Date of vote)
	Cisek
	Mascolo
	McCourt
	Morrison
	Sherman