

Edgartown Planning Board Minutes

Tuesday, May 1, 2018

A regular meeting of the Edgartown Planning Board was scheduled for Tuesday, May 1, 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: Sam Sherman, Michael McCourt, Lucy Morrison, Scott Morgan, James Cisek (Planning Board Alternate).

Absent: Fred Mascolo

Also Present:

Georgiana Greenough, Planning Board Administrative Assistant, Douglas Finn, Planning Board clerk

A quorum was declared.

SITE VISITS

The following site visits were scheduled:

- 9:30 AM -- 26 Cow Bay Rd
- 10:00 AM -- 125 The Boulevard
- 10:15 AM -- 31 Old Farms Trail

No deliberation was conducted as part of the site visits.

BOARD BUSINESS

5:30 PM Norman Rankow, 31 South Water St (20D-326.1) SP: Surface Water District: Install and license 1 tie pile. Applicant requests continuance to May 15.

The Edgartown Planning Board scheduled a public hearing on Tuesday, May 1, 2018 at 5:30 PM in Edgartown Town Hall – 2nd Floor, on the application of Richard Barbini, Schofield, Barbini & Hoehn, Inc., on behalf of Norman Rankow, Owner, to install and license a single pile. The property is located at 31 South Water Street, Assessors' Parcel 20D-326.1. The hearing is held in accordance with MGL Chapter 40A and the following section(s) of Edgartown zoning bylaw: 20.4.e

The public notice was read, and the chair opened the public hearing at 5:31 PM.

Ms. Greenough stated that the applicant had requested a continuance to May 15, 2018.

It was MOVED by McCourt, SECONDED by Morrison

To continue the public hearing to May 15, 2018, 5:30 PM.

VOTED: 5, 0, 0.

5:30 PM Form O – Doug & Stefanie Cronin, 31 Old Farms Trail . Complete emergency vehicle turnaround. (Owners & Brian Smith, RE agent)

The board considered a Form O release, requested by Doug and Stefanie Cronin, and Brina Smith, RE Agent, in regard to a definitive subdivision in relation to the Old Farms Trail subdivision.

The Form O as described by Ms. Greenough as a 'release of municipal interest' in the subdivision property. The document once approved by the Board will be stamped by the Town Clerk, and filed by the applicant with the registry of deeds.

Present: Doug Cronin.

Mr. Cronin described the history of the project, leading up to the necessity for construction of a emergency vehicle turnaround. Mr. Cronin described the widening of their own driveway, a continuation of the road about 100 feet past their driveway, and a 'T' turnaround at the end of the road.

The fire chief and highway superintendent have reviewed the work at the site visit, and approved it as suitable.

It was MOVED by Morrison, SECONDED by McCourt

To endorse the Form O as presented.

VOTED: 5, 0, 0.

5:40 PM Veronica Castellucci, 125 The Boulevard (11A-404) SP Coastal: Garage with bedroom above and swimming pool in Coastal District

The Planning Board scheduled a public hearing on Tuesday, May 1, 2018 at 5:40 PM in Edgartown Town Hall – 2nd Floor, on the application of Veronica Castellucci (owner), to construct a swimming pool with associated deck and patio, and a garage with detached bedroom on second floor.

The property is located at 125 The Boulevard, Assessors' Parcel 11A-404. The hearing is held in accordance with MGL Chapter 40A and the following section(s) of Edgartown zoning bylaw: 14.1.d.2

The public notice was read. The Chair opened the public hearing at 5:40 PM.

Present for the Applicant: Veronica Castellucci (Owner).

Ms. Castellucci described the project, which proposes a new garage, a room above the garage, a patio, and swimming pool. The project also includes a lean-to for gardening equipment, a fenced-in area for the pool equipment (acoustically treatment), solar panels on the roof will provide electricity and heat for the pool. A darker pool will fit in better in the environment. WiFi locks on all doors. Fencing (split rail) will surround the entire property. Lighting will be 'dark sky' friendly (down facing). Gates will be locked.

Additionally, a new driveway will be added. The property is about 2 acres in size.

McCourt: Are all setbacks met? Answer: Yes.

Cisek: how high will the barrier fence be? 51"-55"

A letter from Susan Catling, dated May 1, 2018, in regard to her concerns about the proposal, was read. *(Included herein by reference – copy of letter in file.)* The letter outlined concerns related to two items that could be potential sources of noise: Pool equipment, and the septic-system ventilation.

The two concerns were addressed:

- The septic fan is a green box; the placement is to be moved down the hill (about three feet in grade below).
- The pool equipment are a source of heat as well as sound; while the applicant does not want to have a roof in place, it will be surrounded by a six-foot partition, treated with sound-abatement material.

Ms. Catling was present, and said that her concerns appeared to be addressed.

Mr. McCourt: The Planning Board has permitted a number of pools, but could not recall a pool [equipment] house being approved without a roof on it. How close is your nearest neighbor? Answer: About 30-35 feet.

Mr. Sherman: I do believe that we have approved an open-roof enclosure for pool equipment.

There was some discussion about the potential for additional landscaping to help protect applicant's and neighbor's privacy.

Ms. Greenough asked for the location clarification for the venting system. A plan was provided.

It was MOVED by McCourt, SECONDED by Morrison

To approve the application as presented, with the "Standard Swimming Pool Conditions", the adjustments to the plan being acceptable to the neighbors and the Town.

VOTED: 5, 0, 0.

5:50 PM Fred Condon, 26 Cow Bay Rd (12-23) SP: Coastal District: Demolish an existing nonconforming garage and guesthouse and replace with a new garage and guesthouse in the same location. (Agent: Carole Hunter)

The Planning Board scheduled a public hearing on Tuesday, May 1, 2018 at 5:50 PM in Edgartown Town Hall – 2nd Floor, on the application of Carole Hunter, Hunter Home Design, on behalf of Fred and Carlene Condon (owners), to demolish an existing nonconforming garage and nonconforming guesthouse and replace with a new garage and guesthouse in the same location. Setback relief is requested.

The property is located at 26 Cow Bay Road, Assessors' Parcel 12-23. The hearing is held in accordance with MGL Chapter 40A and the following section(s) of Edgartown zoning bylaw: 14.1.d.2

The public notice was read. The chair opened the public hearing at 5:53 PM.

Present for the applicant: Carole Hunter.

Ms. Hunter presented the site plan, noting the setback lines, and the locations of the two existing structures. The applicants wish to tear down the two existing buildings (in very poor condition), replacing them with a single structure inside the existing footprint.

The new structure would be 21' – lower than the 26' height limit described in the Zoning Bylaw.

The structure would replace pre-existing, non-conforming structures, and would lie inside the setback areas.

Ms. Hunter addressed concerns of some of the neighbors, and cited the plan as the best compromise for all, by not making changes to the location of the structure.

Mr. McCourt asked about the height of the new building versus the old. Ms. Hunter: The new structure would be 6 inches higher than the existing structures.

Cisek: The same location seems to be the best choice for individuals.

The location and effectiveness of landscaping - evergreen trees – as screening on site was briefly reviewed.

Morrison: As this is a pre-existing, non-conforming structure, once completely demolished, doesn't the pre-existing status end? Answer: no.

Morgan: The building has existed since the 1970s; it seems best that it be replaced in the same footprint.

Ms. Greenough read the following letters into the record (included herein by reference, and kept on file):

- Edward Cerullo, President, Cow Bay Corporation (undated)
- Katherine Cerullo (received April 30, 2018); *requested installation and maintenance of mature tree screening as part of the approval of the special permit.*
- Alexander Muromcew (received April 30, 2018); *requested that the new structure be confined to the original footprint and elevation;*
- Susan, Jody and Bob Angevein, and Jody and John Emery (received April 26, 2018); *opposed application; cited concerns related to setbacks; requested that setback relief not be granted.*

Ms. Jody Angevin was present, and asked the board to respect the setbacks, and not grant the variance.

Ms. Hunter stated that the existing building is currently close to the property lines. However, the replacement is no closer than the current structure. Additionally, Ms. Hunter suggested that the existing building could be repaired – or replaced – as a matter of right, without Planning Board review or approval.

Sherman: The view channel appeared to be very open for the abutter to the south. Looking at the structure that is there now, the worst thing for the neighborhood would be to leave it in place, unrepaired.

Morgan: Currently it is two buildings.

Morrison: With the Cow Bay Corporation, what was the result? Answer: The plans are supposed to be submitted to the Corporation for approval. Last year, a plan was submitted for a garage / barn on the west side of the building.

McCourt: did the plan submitted in 2017 include tearing down the two existing structures?

Ms. Carlene Condon spoke, and stated that the 2017 plan proposed to replace the current two structures with a single structure inside the existing footprint.

McCourt: If the original plan, proposing a structure to the west of the driveway, would block a view-channel for the neighbor to the south; replacing the structure in the current footprint seems to best protect neighbor's views.

Ms. Condon: We are trying to protect the interests of as many of our neighbors as possible.

Mr. Fred Condon: We would be happy to work with as many of our neighbors as possible. "Island Gem" may be mistaken in the impact of the proposal to his view. Further: If the structure would be built to the west, a larger building would result and would impact more of the neighbors.

Ms. Angevin again reiterated her concerns regarding building inside the setbacks.

Mr. Sherman closed the public hearing at 6:24 PM.

Morrison: Can the applicants agree to a building moratorium as requested by Cow Bay Corporation? Answer: yes.

Sherman: It's a tough situation, but given the existence of the current structures, really nothing is changing for that lot.

Cisek: the location seems to be better for the applicant, and keeps the 'status quo'.

McCourt: In building the structure on the existing footprint, instead of creating a new building in a different location.

Sherman: For Carole Hunter: Could the roofline be redesigned to be exactly 21 feet above grade (exactly the same as the existing height).

It was MOVED by McCourt SECONDED by Morgan

To approve the application as presented, with the following conditions:

That the structure be redesigned, or the grade adjusted, so that the resulting height of the structure is no higher than the highest point of the current structures;

That the applicant provide a landscaping plan that would provide for better privacy for the abutters;

That there be no construction activity between June 15 and September 15.

That appropriate sound-abatement panels be installed in order to reduce sound from outdoor HVAC equipment.

That HVAC equipment be located no closer to the property line than currently.

VOTED: 5, 0, 0.

6:00 PM AT&T/Fynbo, Continued from 4/3/2018. 14 Sampson Av (34-197) SP: To construct a permanent PWSF tower. Review Findings & Conditions. (John Elder, Anderson & Kreiger)

Present: For the Town: Attorney Ron Rappaport; for AT&T: Attorney Art Krieger (Anderson & Krieger).

Mr. Sherman stated that the board, in its approval of the application, made a procedural error related to the application from AT&T. Mr. Sherman asked Mr. Ron Rappaport, Town's Counsel, to speak.

Mr. Rappaport presented the board with a letter, outlining his recommendations to the board.

Timeline: On April 3, 2018, the application was approved by the board, with no conditions outlined. That decision was not filed with the Town Clerk.

One member of the board was not entitled to vote, having missed one or more sessions of a public meeting. Mr. Rappaport stated that, while the member was not at fault, being an alternate member at the time the public hearing was conducted, that made him ineligible to vote.

Mr. Rappaport has been in communication with attorneys for the applicant, and one opponent. Mr. Rappaport spoke highly of the two groups of legal counsel.

In summary:

AT&T's counsel is requesting that the decision be rescinded, because of the procedural irregularity.

Mr. Strayton's attorney has stated that the vote be held, as a failed vote (3-1, less than a supermajority).

Mr. Rappaport has reviewed the Town's regulations, which state that reconsideration of a vote must happen prior to close of the meeting where the vote was taken. A vote to rescind is "in the nature of" a vote to reconsider.

Changing the regulations to allow reconsideration at a subsequent meeting would be akin to changing the rules after the fact. As an aside, Mr. Rappaport stated that he suggested review of the regulations after the fact.

Mr. Rappaport: I also do not agree with the opinion of Mr. Strayton's attorney; in other legal cases where a vote was conducted in error such as this one, courts have 'remanded' the matter back to the board for redeliberation.

Mr. Rappaport further clarified that, in his legal opinion, the vote of April 3 was 'defective', and might not be considered by the board as a de facto denial of the application. Since no 'final action' has been taken by the board (the filing of a Decision with the Town Clerk), the board could vote to allow the applicant to withdraw without prejudice.

Mr. Rappaport stated that the Edgartown Bylaws and Mass General Laws provide for provisions of withdrawal; after the first public notice, the board can allow the applicant to withdrawn without prejudice, refile, and begin the process again.

Mr. Rappaport suggested that, if the applicant was willing to withdraw, that the board should vote to allow the withdrawal without prejudice, which would subsequently allow the applicant to reapply without delay.

Mr. Sherman asked Mr. Rappaport to address Mr. Krieger directly. Rappaport asked Mr. Krieger if his client would be willing to withdraw without prejudice.

Art Krieger, Anderson and Krieger, responded in the affirmative – AT&T would be willing to withdraw without prejudice, and promptly refile.

Mr. Krieger suggested that the new public record be built from previously received comment; while not suggesting infringement of individual rights to participate, it would allow the most expeditious process.

Mr. Krieger stated that the only other course would be for the Planning Board to declare its vote a denial, whereby AT&T would appeal that decision, and the matter would be likely be remanded back to the Planning Board in the end by an appellate body.

Mr. Sherman (to Rappaport): Who should currently be permitted to vote? Rappaport: A vote to allow withdrawal is a simple majority vote. All members were permitted to cast a vote.

Morrison: what about the MV Commissions' approval of the first application?

Rappaport: If the new application is the same, MV Commission referral is not necessary.

It was MOVED by McCourt SECONDED by Morgan

To allow AT&T to withdraw its application without prejudice.

VOTED: 5, 0, 0.

6:00 PM AT&T/Fynbo, 14 Sampson Av (34-197) Modification to SP: To extend the operation of the temporary PWSF from May 2, 2018 to a) May 2, 2019 or b) the date that is six months after the entry of final judgment or final settlement of any and all appeals of decisions by the Planning Board and the Martha's Vineyard Commission concerning AT&T's application for permit and approvals for a permanent PWSF at this location (Agent: Christina Marshall, Anderson & Kreiger).

The Planning Board scheduled a public hearing on Tuesday, May 1, 2018 at 6:00 PM in Edgartown Town Hall – 2nd Floor, on the application of Christina S Marshall, Anderson & Kreiger LLP, on behalf of New Cingular Wireless LLC (AT&T), requesting a modification to the special permit to amend Condition No. 1 to allow the operation and maintenance of its existing temporary 104 foot ballast mounted concealed antenna monopole and wireless communications facility until the later of (a) May 2, 2019, or (b) the date that is six months after the entry of final judgment or final settlement of any and all appeals of decisions by the Planning Board and the MV Commission.

The requested modification will permit the applicant to continue to provide personal wireless service to Chappaquiddick during the time required to obtain approvals for a proposed permanent facility.

The property is located at 14 Sampson Avenue, Assessors' Parcel 34-197. The hearing is held in accordance with MGL Chapter 40A and the following section(s) of Edgartown zoning bylaw: 11.6, 17.5, 23.3

The public notice was read. The chair opened the public hearing at 6:59 PM.

Present for the Applicant: Attorney Art Krieger, Anderson and Krieger LLP.

Mr. Krieger spoke to the application, describing the history of the temporary tower, and the first extension of the tower.

A letter from Mr. Strayton was read, asking the board not to extend the special permit.

An employee of the Trustees of Reservations spoke about the value of cellular communication as a means to help insure public safety, citing several examples.

Ms. Theresa Dimattia, a resident of Chappy, spoke in favor of cellular communications on the island; however, she stated her preference for an extension of the temporary tower permit, so that other locations could be vetted.

Ms. Kristy Rose spoke in favor of the temporary and permanent tower at the location.

The public hearing was closed at 7:07 PM.

Mr. Sherman spoke in favor.

Ms. Morrison had no issues with the request.

Mr. Cisek spoke in favor of extension.

Mr. McCourt agreed; public safety is a primary concern. The continued use of the temporary tower is a necessity for public safety.

It was MOVED by McCourt SECONDED by Sherman

To approve the application as presented. All conditions of the original Special Permit continue to apply.

VOTED: 5, 0, 0.

6:20 PM Continuation of Stop & Shop from 4/3/2018. Presentation of all proposed plans including written description of all project developments, traffic studies, noise studies, etc.

The Board continued a public hearing from Tuesday, April 3, 2018, on the application of Geoghan Coogan, Esq. on behalf of WJG Realty Trust and Stop & Shop, a subsidiary of Ahold USA for a special permit to construct an addition of approximately 15,952 sf to a one-story pre-existing 25,259 sf supermarket and to complete re-construction of associated site work including the relocation of a drive-thru bank, increasing parking spaces and redesigning the parking lot. The property is located at 245 Upper Main Street in the B-II Upper Main Street Business District on 3.72 acres on the following Assessors' parcels: Map 20A Lots 15.11, 15.12, 57.1, 57.3, 58, 59, 87.1 and 87.2. The hearing was held in accordance with MGL Chapter 40A and Edgartown zoning bylaw article 10.2.a.1.

The chair continued the public hearing at 7:10 PM.

Ms. Greenough reported that the applicant had requested a continuance to May 8, 2018, in order to provide greater opportunity to discuss the project, and respond to board members' concerns.

It was MOVED by Morrison SECONDED by Sherman

To continue the public hearing to May 8, 2018, at 5:30 PM.

VOTED: 5, 0, 0.

**6:10 PM Leaf, 284 Upper Main St (20A-64) SP: B-II Continuation of hearing from April 3.
Mixed Use structure (Nils Leaf, Tim McHugh, owners)**

The chair continued a public hearing from Tuesday, April 3, 2018 at 5:45 PM, on the application of Nils Leaf & Tim McHugh, for a special permit to construct a 3-story mixed use building with 3 retail units on the 1st floor, 2 commercial units on the 2nd floor and a residential unit on the 3rd floor. The property is located at 284 Upper Main St, Assessors' Parcel 20A-64. The hearing is held in accordance with MGL Chapter 40A and the following section(s) of Edgartown zoning bylaw: 10.2.a.1. & 11.

The chair continued the hearing at 71:11 PM.

Present for the Applicant: Nils Leaf, Tim McHugh.

Mr. Leaf presented the Plan, as proposed. The plan includes a "straight-shot" one-way driveway passing from Upper Main Street, through the parking area for the property, to the Town's parking lot; four units are planned (two commercial, and two residential).

McCourt: Retaining walls? Answer: Likely to be planned.

Mr. Tim McHugh presented the elevations. The first floor is to be stick-built; the second and third floors are to be modular.

A 'farmers porch' is planned for the front. Total height from mean natural grade is expected to be 31' 10".

Question: Will an elevator be included? Answer: no.

Sherman: The note on the plan – "Actual house may vary from elevation"? Answer: That speaks to the grade, but not the design of the house.

The remaining elevations were reviewed.

Mr. McCourt: Is there two means of egress from the second floor? Answer: Yes – two forms of egress.

Mr. Sherman: I believe that two forms of egress to grade are required, based on the new code.

Mr. McHugh stated that, if two forms of egress are required, a modification to the plan will be required.

Mr. McCourt: Adding an egress will change the exterior of the building.

Mr. Sherman: We are dealing with a sensitive area of town. A dormer with two windows, offset from center, is not balanced. Mr. McHugh: My name is on the project; I don't want to put up a bad product.

There was some discussion about the rear dormer, the east and west dormers, and the placement of windows on the third floor.

Mr. Sherman suggested that, since there are expected to be changes to the plan, continued deliberation is in order. Mr. Sherman: We want to make this project not just be an improvement, but a real 'gem' for the area, the applicant and the builder.

There was some discussion about the quality of modular constructions.

Mr. Cisek: Do you have a good rapport with the modular construction company? Answer: Yes.

Morrison: Concerned with the need for second egresses. Response: We need to consult with the Building Inspector in regard to code for accesses.

McCourt: rear of the building is pretty much a wall. What can be done about that? Response: We were thinking about adding a walkway along the driveway from the 'park and ride', encouraging pedestrian access. McHugh: Additional windows could be added to the rear wall to break up the visual appearance.

Question: Location of trash cans? A/C condensers? The site plan was presented.

Ms. Greenough: There are a number of considerations outlined in the B-II zoning that need to be addressed; staff can work with the applicants to address these concerns.

Mr. Sherman reiterated his interest in any new construction reflecting the 'style' of Edgartown.

Ms. Kristy Rose: what is the setback in that area? A great deal of green-space will likely be taken up by the new building; there was some discussion about the matter of preserving greenspace between the building and the public way.

Mr. Joe Gervais asked about the siding. Response: Clapboards with corner boards.

Mr. Bill Veno: Regarding green space: Some consideration of existing trees should be taken into account. Response: We can provide greater detail.

It was MOVED by McCourt SECONDED by Morrison

To continue the public hearing to May 15, 2018, at 5:30 PM.

VOTED: 5, 0, 0.

OTHER BUSINESS

Approval of Minutes, Payroll

Minutes from the meeting of April 3, 2018 were reviewed and signed.

Minutes from the meeting of April 17, 2018, were reviewed, and signed.

Payroll sheets for the pay period ending May 1, 2018, were reviewed and signed.

Decisions

The following Decisions were signed:

- Malm (44-45.2), Approved 4/3/2018
- Minicus (51-38), Approved 4/3/2018
- Bad Marthas Farmers Brewery (20A-65.2), Approved 4/17/2018

Other information

An updated packet of information, including plans, elevations and renderings, related to the Stop and Shop Application, were presented to members for review.

Upcoming Meetings

Meetings were scheduled for May 8, and May 15. Meetings were tentatively scheduled for June 5, and June 19.

ADJOURN

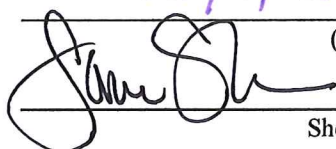

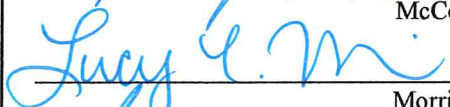

There being no further business, it was MOVED by Mascolo, SECONDED by McCourt
To Adjourn.

VOTED: 5, 0, 0.

The meeting was declared adjourned at 7:48 PM.

Respectfully submitted,

Douglas Finn, Clerk

APPROVED by vote of Planning Board at a regular meeting, held on	
May 8, 2018	
	(Date of vote)
	Sherman (chair)
	Mascolo
	McCourt
	Morrison
	Morgan