

# Edgartown Planning Board Meeting Minutes

May 3, 2016 at 5:30 PM

Town Hall – 1<sup>st</sup> Floor Selectmen's Room

*Members in Attendance: Chairman Alan Wilson, Robert Cavallo, Michael McCourt, Fred Mascolo, and Robert Sparks*

*Staff in Attendance: Georgiana Greenough, Assistant; Lucy Morrison, Clerk*

Chairman Alan Wilson opened the meeting at 5:30 PM.

**5:30 PM: Continuation of a Public Hearing: MV Ocean LLC/Wrigley, 24 Ocean View Ave (29-149) SP: Surface Water District. Construct a second pier on a 3.4-acre lot in the R-60 Residential District.**

*In Attendance: Richard Barbini, Sean Murphy, Ellen Kaplan*

Sean Murphy explained the history of the project. The original application was filed in February of 2010. In April 2011, an appeal was filed with the DEP superseding the conditions of the Edgartown Conservation Commission. The appeal went to the D.C. Superior Court in May of 2013, and the DEP issued a new order of conditions. In July of 2013, the applicants filed a new notice of intent with the Conservation Commission. The plan followed the local bylaw and the state regulations. The Town did not allow for a walkway between the two piers. The modified plan was approved by the Conservation Commission and the Marine Advisory Committee. In November of 2014, another appeal was filed with the D.C. Superior Court, which was denied.

Mr. Murphy explained that there is an existing pier on the property, and that the proposed pier would be located to the south of the existing pier.

Mr. Barbini presented the plans for the new pier. The applicants would like to construct an 87-foot pier with one 60-foot by seven-foot "T" and two 32-foot by four-foot "L"s that would be located opposite of each other. Each "L" would be 16 feet inshore of the "T." The entire pier falls within the faired pier line.

Mr. Barbini explained that the major change in dock design from previous application is that the "T"s are now not as wide, as mandated by the state standards with the appeals. He stated that the dock itself would be located 63 feet from the southern property line. Mr. Barbini stated that the entire pier would be made of wood, and that, so far, all local boards have approved the plans. Mr. Barbini stated that the plans are self-explanatory as far as design.

Mr. Mascolo asked if a pump-out station would be included with the pier. Mr. Barbini stated no, that pump-out stations are only required for commercial marinas.

The Board noted that the existing pier on the property would not be removed, as had been requested in previous applications; and that there would be two piers on the same property, which is not common in Edgartown.

Mr. Murphy presented aerial photos of the property. He highlighted all of the piers within 1,000 feet of proposed pier. He stated that the proposed pier would be 110 feet from the existing pier, and 203 feet to the neighboring pier to the south. The property has 348 feet of beach frontage, and is large enough to be subdivided into two properties under the zoning district, but the property owners do not want to divide the land at this time. Mr. Murphy stated that there is more distance between the two piers on the same property than almost all of them to the north and about equal distance to those to the south.

Mr. Murphy stated that under the definitions of the zoning bylaws, the two piers would not be classified as a marina. He stated that a Super Court Judge, the Building Inspector and the Conservation Commission have all made that determination.

Mr. McCourt asked if the Conservation Commission had conditioned a limit on the number of boats, Mr. Murphy stated that he would check. He assured the Board that piers are on private property and would only be used for personal boats. He stated that this was not the only property in Edgartown with two piers, and mentioned the Vietor and the Vose properties.

Mr. Murphy stated that the Marine Advisory Committee approved the pier as drawn, and noted that it falls within the faired pier line. He stated that the Committee determined that there would be no effect on navigation, and that a boat would be able to turn around in the space. He added that the DEP Wetlands has also approved the plans as drawn.

Mr. Murphy stated that one neighbor is opposed to the application.

Mr. Murphy claimed that this pier is similar to other properties in the neighborhood, and referenced Chapter 91. He stated that the pier conforms with the local bylaws.

Mr. Sparks asked if Mr. Barbini had worked on any of the other properties with two piers. Mr. Barbini replied that he did not work on either of them, and stated that they were all built before his time. He noted that there are numerous properties that abut each other that are owned by the same people and have a pier on each property.

Mr. McCourt commented that the existing pier appeared unsuitable for boat traffic because of the water levels with the sand fill. Mr. Barbini agreed that the original dock would not be suitable for large boats, and that a 32 foot boat would not be able to fit in the space. Mr. Barbini stated that the new dock was necessary to access deep water for larger vessels.

Mr. McCourt asked if there were any remedies for the shallow water. Mr. Murphy stated that the property owner would simply prefer to use the old dock for small dinghies. He stated that the area around the existing pier could be dredged, but that there would be permitting issues. He stated that the

property owner wants the additional dock space, and noted that there would only be one set of lateral access stairs coming down to the beach.

Mr. Murphy stated that the Conservation Commission did not limit the number of boats, and only conditioned that there be no rafting off of the dock. He also stated that there was no condition for the removal of the old pier.

The Edgartown Shellfish Committee sent a letter of opposition on March 21 to express concerns about setting a bad precedent by allowing a second pier on a property. The Shellfish Committee was also concerned about the loss of bay scallop habitat, acknowledging that the bay scallop area is reduced as piers are introduced into the harbor. They also questioned whether or not the two piers would be classified as a commercial marina by the state.

Ellen Kaplan approached the Board as the representative of the direct abutter, who owns the property to the south of the applicant. She presented a map of the harbor in front of the two properties, noting that they are directly across from Caleb's pond, and commented on the narrowness of the channel. She claimed that it was the narrowest spot in mid-Katama Bay. She stated that generally, piers have been prohibited in such narrow areas. She commented that the proposed pier has been shortened since the original proposal, but noted that the tie-off spiles further complicate navigation in the area.

Ms. Kaplan mentioned that there are two free-standing moorings in that location as well. She presented a mock-up of how many vessels could fit on the two piers. She estimated that four boats could fit on the small pier, and that 11 boats could fit on the large one. She argued that the capacity for up to 15 boats qualified the piers as a marina.

Ms. Kaplan stated that neither the Edgartown Conservation Commission, nor the Superior Court directly stated that the piers were not a marina. She stated that the Conservation Commission refused to hear the issue, regarding it as a zoning question. When she had asked them to consider making a judgement, they had refused. She also stated that in an earlier order of conditions, the Conservation Commission had limited the size of the boats and limited the number to nine boats. This decision was superseded in order to remove second staircase and make other revisions to the pier.

Mr. Cavallo stated that in an earlier Planning Board decision, it was conditioned that the original dock would be removed. Mr. Murphy stated that the removal of the original dock was not part of this submittal, and that the lateral access stairs would need to be reconfigured if the existing dock were to be removed.

Ms. Kaplan asked the Board if the two piers would be considered a marina. She stated that Article XX of the Edgartown zoning bylaws, which regulates the Surface Water District, defines a marina as a location that provides docking for five or more vessels. She stated that Chapter 91 defines a marina as a berthing area with docking facilities for 10 or more vessels. Ms. Kaplan stated that under Chapter 91, there was no question that the two piers would be considered a marina. She stated that Chapter 91 regulations require that certain facilities must accompany a marina, including: refuse receptacles, bathrooms and a

pump-out station, none of which were included in this application. She stated that there should be no question that this is a marina under either bylaw.

Ms. Kaplan stated that the additional pier will affect the water quality, by causing dredging and turbidity in a narrow channel. She stated that the Division of Marine Fisheries and the Shellfish Committee are concerned about scallops and quahogs. There is a lot of commercial and recreational shellfishing activity in that area and in lower Katama Bay. Ms. Kaplan urged the Board to deny the application.

Ms. Kaplan also referenced Article XIX of the Edgartown zoning bylaws, which regulate the Flood Plain Zone, and states that no new construction shall occur below mean high water in any velocity zone. She provided a map in the packet of information submitted to the Board. Ms. Kaplan stated that under section 19.5 of the zoning bylaws, the project as proposed should be prohibited. She suggested that application be re-filed as a variance of Article XIX.

Mr. Sparks asked about the two other properties in Edgartown with two piers. The Vietor property, located on South Water Street, where the second pier was added after the property was subdivided, and the Vose property, which has been subdivided since.

Mr. Mascolo stated that after reviewing the topographic information, the water around the existing dock is very shallow. Mr. Murphy confirmed. Mr. Mascolo suggested that the Board condition the smaller, existing pier to only be used as a dinghy dock. He also noted that all of the other piers in the surrounding area have access to deep water. Ms. Kaplan claimed that the existing pier has the capacity to hold a large number of boats, just not large vessels.

Ms. Kaplan referenced Article XIII, which specifies that under the requirements for a special permit for a pier is to provide reasonable protection of natural features. She asked the Board to consider what it could mean for the fisheries and wildlife, as referenced in the Shellfish Committee's concerns and in the letter from the Division of Marine Fisheries written in 2011. She asked the Board to consider the shellfish area, the narrowness of the channel, and the significant effect on the shellfish beds. She claimed that the island workforce relies on scalloping area in the winter. She asked why was it necessary for a property owner to have two piers that could house 15 boats.

Ms. Kaplan also mentioned that Articles XIII and XIV both require a special permit if the utilities are not underground. She stated that the utilities were not shown on the site plan, and asked whether or not they would be underground.

Ms. Kaplan reiterated that this is the wrong location for two piers that could berth up to 15 boats, some of which have the potential to be very large. She stated that a busy, congested pier in a busy, congested area is inappropriate for the Town. She urged the Board to reject the proposal.

Mr. Murphy stated that Ms. Kaplan represents the neighbor, who also has a mooring in the congested part of the harbor.

Mr. Murphy referenced the requirements for Articles XIII, XIV, and XX. He stated that the application encompasses all of those requirements. He stated that the only thing unique to this application from any other pier is that there is already a pier on the property. He argued that if this pier were to be considered a marina, then every pier in Edgartown would be classified as a marina. Mr. Jason has clearly stated that the proposed pier would not be considered a marina, since services would not be provided. He added that the regulations on the state level were all intended for commercial operations. He emphasized that this pier would not be a commercial operation, and therefore was not a marina. He reiterated that no public or commercial activity would occur on the property.

Mr. Murphy added that there was no empirical or scientific evidence to support the Shellfish Committee's concerns. He stated that the proposed pier would not impact any shellfish. Mr. Murphy also commented that every pier in Edgartown is located in a velocity zone.

Mr. Wilson asked what kind of provisions would be made for storms. Mr. Murphy stated that there are a couple moorings that came with the property that could be used for the larger boats. The smaller boats could be tied off in between the piers. Mr. Murphy stated that the boats will be dealt with however necessary to be secure or removed from the water.

Mr. Murphy stated that the dock will have underground utilities. He suggested that the utilities will probably be bored down, like the Farrissey property, or led down the stairway and buried at the bottom. The existing dock has water, which is fed down the stairs. Mr. Murphy and Mr. Barbini apologized that the utilities were not shown on the plans. The Conservation Commission limited the number of lights in their most recent order of conditions.

Mr. Wilson closed the public hearing at 6:19 PM.

Mr. Cavallo stated that he had no problem with the application, other than that there would be a second pier on the property. He stated that the comparisons made to the Vietor and Vose properties did not apply.

Mr. Sparks asked if anyone present was familiar enough with shellfishing to know whether or not the addition of a pier would adversely affect the scallops. Mr. Mascolo stated that he has experience with commercial shellfishing, and stated that most shellfishermen avoid down harbor, since it is not as plentiful as Cape Pogue. Mr. Wilson stated that he does see scallopers in mid-Katama Bay.

Mr. Sparks stated that the area will be used for vacationing activities like swimming, fishing and boating. He stated that the property is located on a narrow passage, but did not think the proposed pier would clog the channel. He stated that the Marine Advisory Committee had no concerns about navigation. He did not consider the piers to constitute a marina, since they will not provide service to anyone but the property owner. He commented that the Board would have approved the application if the other dock were removed, as referenced in the minutes from April 6, 2011. Mr. Sparks stated that all of the Board members are concerned about setting a bad precedent, and that there were no other problems with any of the other parts of the application.

Mr. Mascolo commented that based on the aerial pictures, the property owners were short changed by the sandbars. He would suggest that the Board limit the number of boats on the smaller dock, but the topographical area around the dock may already limit the boats.

Mr. McCourt stated that the Board has an issue with two piers on one property. He stated that if the existing dock were removed, there would be no problem. He asked if the Board was allowed to limit the number of boats.

Mr. Murphy stated that removing the dock would not be simple, since the lateral access stairs that lead to the existing dock would still be necessary. He stated that he would need a continuance to talk to his client about modifying the application so drastically.

Mr. Cavallo moved to approve the request for continuance.

Ms. Kaplan requested that the continuance be to the first meeting in June.

Mr. Sparks moved to continue the hearing to June 7<sup>th</sup>. Mr. Cavallo seconded, and the motion passed unanimously, 5-0.

**6:28 PM: Continuation of an Administrative Review: Cellco (Verizon) 59 North St (29A-96) Construct new personal wireless service facility on North St Tower and construct equipment shed next to tower with back-up generator**

*In Attendance: Elizabeth Mason, Agent*

Elizabeth Mason approached the Board and presented site plans as well as the requested sound mitigation information.

From the last hearing, Ms. Mason stated that the two main issues from the Board were the location of the equipment shelter and concerns of the noise made by generator. She presented these concerns to Verizon, who agreed to revise the plans to house the cabinets on the other side of the tower. The Board conducted a site visit the morning of the hearing and saw the changes.

Ms. Mason presented the environmental sound assessment. She explained that a DC generator and a small fan would be the two pieces of equipment that would generate measurable noise levels. These would be located on the back side of the property with the other equipment. Ms. Mason explained that the DC generator would only need to be tested every two weeks, and would not run at full steam. She stated that the generator will idle for about 30 minutes every two weeks. Noise levels were taken 23 feet from generator, and decibels measured in the low 50 bpas. Both the fan and the generator were considered lower than ambient sounds. It was determined that the existing equipment on the property is louder. She stated that nothing would be audible within 200 feet.

Mr. McCourt asked what benefit the equipment would provide. Ms. Mason replied that equipment would provide improved capacity for the Verizon network in the area. She stated that there is a growing

need for wireless coverage. There are more and more devices and more installations are needed to keep up. She stated that Verizon is attempting to stay within compliance of their license under the telecommunications act by providing service to customers for personal, professional and emergency uses.

Mr. Wilson asked if anyone in the audience would like to speak for the application. Bryan Byrne expressed his approval. There was no one in the audience to speak in opposition to the proposal.

Mr. Wilson closed the public hearing at 6:34 PM.

Mr. Sparks stated that he listened to the fans on the site visit, and noticed that they were almost inaudible. He stated that the closest residence is 280 feet away, and that all of the other equipment sheds on the property would act as a buffer to shield any noise.

Mr. McCourt commented that the generator would only be used to build up the batteries, and may not even be needed for long periods of time. He stated that the area is heavily wooded, which would further buffer the noise. He had no problems with the application.

Mr. Mascolo moved to approve the changes to the cell tower with standard Personal Wireless Service Facility conditions. Mr. Cavallo seconded, and the motion passed unanimously, 5-0.

**6:38 PM: Form A – Turner, Stephen C., 39 Slough Cove Rd (44-12.2) Divide into two parcels**

*In Attendance: Reid Silva, Stephen Turner*

The Board conducted a site visit the morning of the meeting, and noticed that the property was not staked. Mr. Silva apologized that the property was not prepped for a site visit.

Ms. Silva presented the site plan for the 11.3 acres of vacant land. The applicants proposed a single lot division of 1.5-acres, with a 9.8-acre parcel remaining. The land was divided in a way to keep the smaller lot close to the neighboring house, in order to preserve the open space. The smaller lot would have 50 feet of frontage along Slough Cove Rd, and the larger lot would have 148 feet of frontage.

The plans meet all the requirements of a Form A.

Stephen Turner approached the Board. He stated that he was born on the original 65-acre piece of property, when it was a family farm. He stated that his 89 year old mother is still living on the property, but that her health is failing, and that she requires around the clock companions. He stated that in order for her to continue to age in place, the family decided to sell a piece of property. He stated that the area is a very special place, and that the lots were shaped to consolidate with the existing structures in the area. There are currently no buildings on the property at all. He stated that the area is wide open.

Ms. Greenough stated that the application does not need to be referred to the MVC.

Mr. Cavallo moved to endorse the Form A because the lots meet all criteria. Mr. Mascolo seconded, and the motion passed unanimously, 5-0.

**6:44 PM: Form A – Kanarian/Hagen, 120 Peases Point Way South (29A-34) Divide lot into two parcels**

*In Attendance: Doug Hoehn*

The Board conducted a site visit the morning of the meeting. The 1.34-acre property is located at the intersection of Clevelandtown Road and Peases Point Way, and is located in the R-20 residential district with half acre zoning.

There is a 25 foot wide easement across property. The area of one lot would be 29,217 square feet, and the second lot would be 29,309 square feet. Both lots would have plenty of frontage and adequate access. There are no agricultural restrictions on the property.

Mr. Cavallo moved to endorse the Form A because it meets all criteria for an ANR application. Mr. Mascolo seconded, and the motion passed unanimously, 5-0.

**6:50 PM: Nils “Gus” Leaf, 284 Upper Main St (20A-64): 6 month review**

*In Attendance: Nils “Gus” Leaf*

Mr. Leaf approached the Board to present an update on the progress made at 284 Upper Main St. He made an agreement with his ex-wife to buy her out and will be going ahead on his own. He has spoken with a contractor, and will be moving forward with pricing. The plans have already been approved, and Mr. Leaf does not anticipate needing any extensions past September.

**6:53 PM: Other Business:**

Ms. Greenough stated that due to an oversight, a letter received on the Butcher/Thoma application was not read during the public hearing. She suggested that the letter be read into the record, and afterwards, the Board may decide to reopen the hearing if determined that the decision needs to change. Ms. Greenough read the letter written on April 14, 2016. Maria Krokidas and Bruce Bullen were both present in the audience. Their letter claimed that when they purchased their property in 1985, they had views of the ocean on three sides. As other lots in the area have been developed, these views have dwindled. They claimed that increasing the size of the structure would increase its non-conformity, and suggested that the applicants redesign the second story so as not to impede on their last remaining view.

Ms. Greenough clarified that the structure was not non-conforming, and that only the lot was non-conforming.

Mr. Sourati presented the plan to the Board. The new house was outlined in red.

Maria Krokidas approached the Board and located their property on the maps.



Mr. Sourati reviewed the site plans with Ms. Krokidas. The footprints for the structures were very similar. The proposed dwelling would be moved eight feet back and 20 feet to the east, which would move the structure out of shore zone.

Mr. Sourati stated that the applicants have tried to comply with the Conservation Commission by moving the house out of the 100 foot shore zone buffer. He claimed that this was the last remaining ranch house, and that everyone else in the neighborhood has a two-story house. He stated that the house is modest.

Ms. Krokidas stated that she agreed that there should be a two-story house on the property to fit in with the neighborhood. She claimed that the screened porch and above would obstruct the view from her property, and asked that they be reconfigured.

Mr. Bob Butcher, the property owner, was present in the audience. He stated that he purchased the property to be his retirement home, and that he will be living in it year-round after it is renovated.

Mr. Sourati claimed that the architect had looked at the lot and the buildable area after the wetlands and flood plain, and fixed the non-conformity on the front yard setback. He stated that the goal was to keep the views as open as possible, but the applicants were not left with much to work with once the parameters were checked. Mr. Sourati stated that the existing house is 39 feet from Edgartown Bay Road, and that the new one would be 51 feet.

Ms. Krokidas invited the applicants to come and look from their property to get a sense of the area and to see if there would be a way to compromise.

Mr. Wilson asked the Board members if they would like to reopen the hearing. Mr. Sparks stated that Planning Board deliberations are based on zoning bylaws. He stated that relief cannot come from this Board, since the Planning Board cannot guarantee views and open sight lines; however, the Board has encouraged people to work together. He stated that it was not in the purview of the Planning Board to provide relief, and that relief must come from the applicants.

Mr. Mascolo stated that the problem with Katama is that it's so flat. All the houses on the water are huge now, and completely block views of the water. He stated that the proposal decreased the non-conformity of the lot, and moved the house out of shore zone. He stated that the proposal is in keeping with neighborhood, but encouraged the applicants to work with their neighbors to form a compromise.

The Board decided there was not sufficient reasoning to reason to reopen the hearing.

Mr. McCourt moved to not reopen the hearing and to abide by the original decision made two weeks ago. Mr. Cavallo seconded, and the motion passed unanimously, 5-0.

Ms. Greenough announced that Robin Bray and several other Mill Hill residents had reported another violation of the no cut, no build buffer zone. Several residents were present in front of the Board to express frustration.

Mr. Cavallo stated that procedurally, when there is a violation, it gets brought to the attention of the Building Inspector, the enforcement agent. Mr. Cavallo suggested that Ms. Greenough write a letter to Mr. Jason noting this violation.

Mr. Sparks stated that photographs and other evidence should be forwarded with the letter.

Robin Bray suggested to the Board that the area looks as though it is being prepped for a fence, which is also a violation of the buffer zone.

The Board decided to meet the following day at 9 AM to investigate.

Norman Rankow was present before the Board to clarify a condition of a special permit. The Planning Board had issued a special permit with conditions that there be access to an abutting neighbor's dock. Mr. Rankow stated that he had no intentions of using the dock, but was trying to negotiate the condition. He met with the Building Inspector who had agreed that the condition exists.

Mr. Cavallo suggested that Mr. Rankow put the question in writing, and give it to Town Counsel.

#### **7:24 PM: Review HPP Draft**

Ms. Greenough explained the purpose of the Housing Production Plan. She stated that she was hoping to get some input and cooperation from the Board.

Ms. Greenough stated that she was interested in focusing on dormitory housing, and would like to start to think of ways to implement that in conjunction with the rest of the plan.

Mr. Turner explained that the HPP process starts within the towns. He has applied for grant money from the state to allow each town to strategize their own goals and plans. A consultant will be hired to facilitate with the statistics. Mr. Turner emphasized that the plan will be different for each town.

Mr. Cavallo asked if Mr. Turner was familiar with the proposal presented to Planning Board about dormitory housing. Mr. Turner replied that he was familiar, but was not present to weigh in as an opinion; he was present to listen and assist the Board. He encouraged the Board to figure out the wastewater and other infrastructures before deciding on a definite location.

Mr. Turner encouraged the Board to think about ways to make the process attractive to private developers.

Mr. McCourt stated that it is noticeable that the housing crisis is getting worse, and has reached a critical point.

The Board thanked Mr. Turner for applying for grant money.

Mr. Cavallo moved to adjourn. Mr. McCourt seconded, and the motion passed unanimously, 5-0.

The meeting was adjourned at 7:40 PM.

Respectfully Submitted,

Lucy Morrison

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<i>Alan O. Wilson, Chairman</i>
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<i>Robert Cavallo</i>
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<i>Fred Mascolo</i>
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<i>Michael McCourt</i>
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<i>Robert Sparks</i>
Edgartown Planning Board
Date signed: _____