

**Edgartown Planning Board Meeting Minutes**  
**June 7, 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, Robert Sparks and Alternate James Cisek*

*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.**

The hearing was continued to July 19<sup>th</sup> at 5:30 PM.

**Old Business:**

Robin Bray contacted the Board regarding another violation of the Mill Hill subdivision no-cut, no-build zone. Ms. Greenough wrote a letter to the Building Inspector with the details. There are fence poles installed in the middle of the no-cut, no-build zone. Mr. Cavallo asked if Ms. Greenough was sure that the poles are in it, because the builder did not think so. Ms. Greenough and the Mill Hill residents confirmed that the fence posts are located in the zone. The letter clearly states that generally, fences are not considered structures, but the conditions of the subdivision specifically prohibit fences in the no-cut, no-build zone under section 4.A.5.c. The landscaping plan was approved by Mr. Jason, and it clearly shows a fence in the no-cut, no-build zone.

Mr. Cavallo moved to authorize Ms. Greenough to send the letter as written. Mr. Mascolo seconded, and the motion passed unanimously, 5-0.

Ms. Greenough read a letter from Andrew Stickl regarding ADA violations and suggestions for better layout of the parking lot in Post Office Square in conjunction with the Edgartown Lofts project. The Board commented that the suggestions were wise and sane. Ms. Greenough suggested that the letter be passed onto the Building Inspector, who is also the ADA rep to the Town, and George Sourati, the engineer for the parking lot.

Mr. Mascolo moved to authorize Ms. Greenough to forward the letter. Mr. McCourt seconded, and the motion passed unanimously, 5-0.

Ms. Greenough stated that the Planning Board has \$3,109.13 available until the end of the month. The Board offered suggestions on ways to use the money. Topics of discussion were hiring consultants to assist with the paving of Meetinghouse Way, supplies, and hiring help to update the zoning bylaws.

**5:45 PM: Public Hearing: "Gettin' Fresh" Sue McSweeney, 243 Edgartown- Vineyard Haven Rd: Unit 2B (21-6.32) SP: B-II Change of Use: to food preparation**

*In Attendance: Sebastian Pattavina, Susan McSweeney, Sarah Connolly, Mike Diaz*

Chairman Wilson opened the hearing at 5:45 PM.

Mr. Pattavina approached the Board to present the application to open a juice and smoothie bar in the Triangle plaza called Gettin' Fresh. He stated that the vision for the space would be similar to Blissed Out in Vineyard Haven, and healthy beverages would be blended on the premises for \$7-12. He stated that modern juice bars are growing in popularity. He stated that the juice bar would work in concert with the two abutting properties, the massage parlor and the yoga studio, but would be a separate financial entity. He was planning on being open from April through November, from 7 AM to 7 PM, with condensed hours for the shoulder seasons. He stated that he would like the hours of operation to align with the yoga studio schedule.

The Board asked if the applicants have been before the Board of Health. Mr. Pattavina replied that they are in the process of applying, and that revisions are being made to the application. He stated that the paperwork should be submitted within the next few days. The applicants do not have a projected opening date, since there are too many variables, including plumbing and contractors.

Mr. Cavallo asked about the previous uses of the building. Mr. Pattavina stated that the space was used as a barber shop two years ago, and before that was storage. He stated that the space was unrented for a long time. Mr. Pattavina rented the space after it was a barber shop, and used it as a lounge area for the spa. He purchased the space in November, and before that was a tenant.

Mr. Wilson asked if there would be any outdoor seating. Mr. Pattavina stated that there were no plans for that at this time. He mentioned that the condo spaces in the Triangle are permitted to have benches and flowers outside their stores, but that the juice bar will primarily be a take-away business. Mr. Wilson asked if the store would be responsible for trash pick-up. Mr. Pattavina said yes, absolutely.

The Board mentioned the non-compete clause in the Triangle association bylaws. Mr. Pattavina stated that Dippin' Donuts sells smoothies, pastries and sandwiches, but has a completely different concept than Gettin' Fresh. He stated that he was of the opinion that the donut shop and the health food restaurant would not be competing for business, due to the differences in products and preparation. Mr. Pattavina stated that with all due integrity and respect to Mr. Diaz, there was no competition factor. The clientele are not the same people, and the two stores would serve different populations. Mr. Pattavina stated that as a neighbor and friend, he did not feel like there will be any infringement on Dippin' Donuts, or that the Gettin' Fresh would in any way try to copy what they do.

Mr. Wilson asked how many employees the juice bar would hire. Mr. Pattavina stated that on a full day there would be three employees at one time.

Mr. Mascolo stated that he owns property in the area. Mr. Mascolo disclosed a relationship with the applicants, and stated that there was no opportunity for financial gain. He stated that he would give a completely unbiased opinion on the application.

Mr. Cavallo asked what the Board could do about the non-compete clause. Mr. Wilson replied that it is not a Board issue, and hoped that the applicants would work it out.

There were no letters received on behalf of this application. There was no one present in the audience to speak in favor of the application.

Mike Diaz, the owner of Dippin' Donuts, approached the Board. He stated that he currently sells smoothies, baked goods and coffee. He stated that he has owned a few different stores across the island, and knows Mr. Pattavina on a personal level. He stated that the juice bar could be a slippery slope, and that once a sink is installed and the special permit is approved, the place becomes a food establishment, and anything could be served. Mr. Diaz stated that the no competition clause was a major selling point for the condominium, since it promotes diversity.

Mr. Cavallo stated that it does not seem to him that there would be any competition, but acknowledged that things can open up once approved. He stated that Mr. Pattavina could end up doing exactly what Mr. Diaz does. Mr. Wilson stated that it was not within the purview of the Planning Board to negotiate as part of a lease agreement.

Mr. Diaz stated that he understood, and was only present before the Board to state his case into the record, so if there is a next step, it will be on record.

Mr. Wilson closed the public hearing at 6:04 PM.

Mr. Cavallo clarified that the applicants are not breaking any laws with the Town of Edgartown by filing for a juice bar, but that the condominium covenants may be broken, which could result in a civil lawsuit. Mr. Cavallo stated that the Planning Board has no control over the condominium covenants. He asked whether the Board would like to condition the application to prevent any infringement. Mr. Wilson stated that he did not want to get involved.

Mr. Sparks stated that the application is essentially for a change of use. He stated that so long as the trash is dealt with, there are no foul smells, and that parking is not an issue there were no problems with the application. He commented that there is no assigned parking in that lot, but did not anticipate any traffic issues. The space is approximately 600 square feet; and according to Zoning Bylaw 10.5.b.3.a, one parking space is required for every 350 square feet of gross floor area. The parking in the Triangle was determined to be adequate.

Mr. Cavallo moved to approve the application due to the reasons stated above. Mr. Sparks seconded, and the motion passed unanimously, 5-0.

**6:08 PM: HPP Grant Discussion with the Board of Selectmen, the Affordable Housing Committee and Adam Turner, MVC**

*In Attendance: Art Smadbeck (Selectmen), Michael Donaroma (Selectmen), Margaret Serpa (Selectmen), Christina Brown (AHC), Christine White (AHC), Nancy Trimper (AHC), Adam Turner (MVC)*

Adam Turner approached the Board. He stated that the Housing Work Group was formed as a branch of the All Island Planning Board in an effort deal with affordable housing issues. The group concluded that a Housing Production Plan (HPP) would be a valuable resource for each town to figure out where they are with affordable housing, and where their focus should be going forward. Once each town has an established document, it would be possible to maybe have other discussions about inter-town collaboration. Mr. Turner stated that the group decided to apply for a Planning Assistance Towards Housing (PATH) grant from the state to fund the preparation of an HPP. Mr. Turner stated that each town will have a different plan.

Mr. Wilson asked for specifics of the money. Mr. Turner stated that each town will receive approximately \$20,000 to hire a consultant to complete visioning exercises in each town.

Mr. Sparks asked if the group was reinventing the wheel, and if they had gone through master plans, and all of the other studies already completed. Mr. Turner replied that all of the planning documents created so far will have an impact on the HPP.

Art Smadbeck, a member of the Board of Selectmen, stated that the letter requesting the grant had far too much emphasis on regional efforts. He stated that the grant money should be given only to Edgartown. He stated that the letter implied outside influences were trying to somehow work regionally. Mr. Smadbeck stated that Edgartown has been paying attention, has been active, and is leading the island on affordable housing with the 60 rental units at Morgan Woods, eight units at Fisher Road, and the upcoming 32 units on Meshacket Road. He stated that he was completely in favor of receiving the grant, but thought that the Planning Board should use it to refine only what can be done in Edgartown. He stated that to take that money and use it to create some sort of regional effort is not helpful to Edgartown, and could actually be harmful. Mr. Smadbeck stated that it was important to be clear with state that the money will not go towards any regional efforts.

Christina Brown stated that the Edgartown Affordable Housing Committee had discussed the HPP and the PATH grant, and thought that it would be a good idea for the Town to act on the Housing Needs Assessment of 2013, which does not provide much about follow through or plans, especially specifically on what the Edgartown community needs. She stated that she hoped the HPP would outline what Edgartown wants, needs, and what would make it a better place to live. She stated that the pooling between towns is a different stage, and that discussions between local boards are a necessary first step.

Ms. Greenough stated that the All Island Planning Board created the first step towards progress, and noted that it was a group effort. She stated that it is important to have all of the towns on the same page.

Christina Brown stated that the Board of Selectmen, the Affordable Housing Committee, and the Planning Board are all concerned about affordable housing. She asked how much influence the Boards would have over the scope of work for the consultant, once the grant comes to each individual town. Mr. Turner stated that the consultants will receive all of their direction from the town boards, and that the recommendations for each town will be very different. Ms. Brown requested a copy of the RFP.

Mr. Turner stated that a Selectmen's signature is needed for the letter. Mr. Turner stated that he will send the scope of work, letter and RFP to those who requested to see it.

The Board thanked everyone for attending the discussion.

The clerk, also the assistant to the Affordable Housing Committee, corrected some of the values and figures that Mr. Smadbeck mentioned to the Board.

**6:22 PM: Form A: Lynch/Look, 56 Robinson Rd (20C-146.2) Divide off small Parcel A (1,088 sq. ft.) to convey to neighbor to provide for access with the use of an easement.**

*In Attendance: Reid Silva*

Mr. Silva approached the Board to explain the application. A small portion of the Look property would be divided off of the property to connect to Mr. Lynch's property for parking and additional screening.

Mr. Mascolo disclosed that he represented both applicants when the properties were sold, and that none of this came up during the sale negotiations. Ms. Greenough stated that a Form A only requires three signatures, and that Mr. Mascolo did not have to sign.

Mr. Silva stated that both lots are conforming, and that the application would not create any non-conformity. There are no structures located on the portion of property being conveyed.

Mr. Silva also provided a copy of the existing easements; one in the front of the property for access, and one in the back to maintain a hedge row. There would be no changes to either easement.

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

**6:35 PM: Form A: Higgins/Shapiro, 29 Plain Field Way (28-31.8) Divide off small Lot 2 (1,135 sq. ft.) to convey to neighbor Shapiro (28-31.91) to transfer portion of Shapiro driveway on Higgins property to Shapiro**

*In Attendance: Ken Abbott*

Mr. Abbott approached the Board to explain the application. The site plans detail an agreement between neighbors. The abutting property, now owned by Shapiro, was a part of condominium complex, and is a pre-existing non-conforming lot, which received a variance to subdivide under the ZBA. The owners are building a new house and installing a pool, which requires a fence and associated landscaping. The Higgins would give a 1,135 square feet portion of their property on the west side to provide an extra buffer to the Shapiro property.

The Higgins lot would still meet the size limit, with a lot size of 25,314 square feet. The Shapiro lot would still be non-conforming under R-20 zoning, but there is an existing variance in place.

Mr. Sparks disclosed that in 1983, he subdivided the property and sold the lots.

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

**6:40 PM: Application for Change of Address: Duala, Gary. 57 Eleventh St to Tenth St. Street number to be assigned by Assessors.**

*In Attendance: Gary Duala*

Mr. Duala approached the Board. The Board conducted a site visit the morning of the hearing.

Mr. Duala stated that the front of his house faces 10<sup>th</sup> Street, and noted that 10<sup>th</sup> St is paved, while 11<sup>th</sup> St is not. He added that his driveway and garage are also closer to 10<sup>th</sup> Street than to 11<sup>th</sup> St. He stated that the relocation of the driveway would give more privacy to the abutting neighbors on 12<sup>th</sup> St.

Mr. Cavallo moved to approve the change of address. Mr. Mascolo seconded, and the motion passed unanimously, 5-0.

**6:44 PM: Tyra, Form B-Preliminary Plan for Subdivision of 6.25 acres for 4 lots, off Pennywise Path (21-150 & 21-151)**

*In Attendance: Reid Silva, Claire Chalfoun, Tom Barrett, Ann Floyd, Michael Calheta*

Mr. Silva approached the Board to present a Form B preliminary application to create four lots off of Pennywise Path. The property is located at the corner of Pennywise and Ben Tom's Rd. Mr. Silva stated that there have been title issues over the years that have been resolved. The Assessor's have cut the lot in half, and assessed to two owners: Fisher to the north, and Tyra to the south. Mr. Silva stated that the application is essentially to divide one large lot into four.

Mr. Silva stated that both Pennywise Path and Ben Tom's Road are both special ways, and the intent is to protect them. The plans detail a new right of way off of Pennywise Path running down the eastern side of the property, ending in a hammerhead.

Claire stated that it would be a bad idea to build a road in the area. She stated that there are already dangerous situations on Pennywise Path, and that people drive too fast. She urged the Board not to allow any more traffic.

The Board asked why a road needed to be created. Ms. Greenough answered because Ben Tom's is not a developable road, and the lots south of Pennywise Path need access.

Mr. Silva stated that both roads are considered special ways, and that the goal is to protect them. He stated that Ben Tom's Road is narrow, and currently used to promote biking, walking, and hiking. There are no houses on Ben Tom's Road, and it is not a road that most people would consider residential.

The Board commented that access and traffic on the special ways are going to be the main issues of the subdivision. Mr. Silva stated that the purpose of this discussion was to gather information. He stated that he felt that Pennywise Path was a more appropriate access than Ben Tom's Road.

Mr. Silva stated that the application would include a proposal to tie into town water and sewer from Whaler's Walk. Mr. Sparks asked if the plant had capacity. Mr. Silva stated that Mr. Tyra had asked the wastewater commission, who said that it would work. The Board asked if the access could be off Whaler's Walk, since water and sewer were being brought in from back. Mr. Silva stated that the property does not have any rights to Whaler's Walk. He agreed that it would be a preferable access, but the property does not abut the road.

Ann Floyd asked if there was a way to get rights to Whaler's Walk. Mr. Silva said no, that it was a private road with an association, and the property does not have any frontage on that road.

Ms. Greenough commented on the gap on the Assessor's map. Mr. Silva stated that it was a common mapping issue, not a title issue.

Claire asked if there were restrictions on the ancient ways. Ms. Greenough replied yes, that a special permit from the Planning Board is required for access. Ms. Greenough read the bylaw, and noted that Pennywise Path and Ben Tom's Road are both considered vehicular special ways. It was also noted that development is prohibited off of Ben Tom's Road, and that curb cuts are not allowed.

Mr. Silva stated that the intent of the bylaw should not be to strip access to a property only with frontage off of that special way. He stated, however, that it made more sense to create the entrance to the property from Pennywise Path, with a hammerhead at the end.

The full application will be for a Form C to subdivide and a special permit for access using a special way.

Ann Floyd argued that Pennywise Path and Ben Tom's Road are equal in status. She stated that development on Pennywise has doubled, and thought that Ben Tom's Road should be the access. The Board stated that access off Ben Tom's Road is prohibited in the zoning bylaws.

Mr. Sparks commented that he did not feel Pennywise Path would be impacted by four lots, but felt that Ben Tom's Road would.

Claire stated that at this point in time, there are horses, mopeds, motorcycles, bicycles, and cars using Pennywise Path, and it is heavily trafficked. She stated that it's a problem since the road is barely wider than a single lane. She stated that Ben Tom's Road is heavily trafficked with large trucks that cut through to Morning Glory Farm. She urged the Board to think carefully about where the access will be, and did not think that Pennywise Path was a smart choice.

The Board thanked Mr. Silva for the preliminary discussion. The Board requested a traffic count per home, including the trips per day, an impact report, and for the building envelopes to be shown on the plans.

**7:14 PM: Wave Lengths, 223 Upper Main St (29A-95) Encase elevator shaft on roof (exceeding the roof height) with brick replicating a chimney. Determine if deminimis.**

*In Attendance: Colin Young, Jayne Leaf, Phil Miller*

Mr. Mascolo recused himself from the hearing.

Mr. Young approached the Board to explain the modification. He stated that the plans were drawn with an elevator to the third floor. The approved elevation plans showed a slanted roof, instead of showing the elevator shaft. Mr. Young explained that the space would be non-habitable and only used for transport. He mentioned that the Building Inspector had suggested that it be made to look like a chimney.

Ms. Greenough asked how high the elevator equipment would be above the roofline. Mr. Young stated that the elevator has equipment that needs to be mounted up high, and it would be about two feet above the roofline.

Mr. Young presented pictures to Board. The Board noted that there were no dimensions on the sketches.

Phil Miller, the contractor, approached the Board. He stated that he typically uses real brick, but plans to use veneer to mask the elevator equipment. He commented that veneer is used all over Edgartown.

Mr. Cavallo clarified that the building will be two feet higher than it was supposed to be.

Mr. Young stated that the plans changed so many times, and that the final submission of the floor plans did not include the elevator equipment, even though the elevator was already approved. He stated that the structure is 32 feet high. The equipment would be two feet over the height limit.

Mr. Cavallo stated that it was important to make it look nice aesthetically.

Ms. Greenough stated that she reviewed the file, and found old elevations to be compared to the picture presented. The Board noticed several major differences in what was approved, to what was being built. Mr. Young stated that the only difference was a slanted roof where the elevator equipment is supposed to be. The Board disagreed and referenced the windows on the west side of the building.



Mr. Sparks asked what happened to the rest of the design. Mr. Cavallo stated that he may not feel comfortable going forward with the project, and stated that he would like to see a plan depicting the original approval.

Ms. Greenough stated that she will take photographs of the current building.

Mr. Cavallo stated that he felt like so much time has been spent on this project, and he felt deceived. He asked if it would be acceptable to place an overlay over the plans to show the differences.

Mr. Sparks stated that he wanted to see the side of the building look like what was originally approved.

Mr. Wilson stated that the current building looks industrial, and asked about the setbacks. The applicants stated that Mr. Hoehn would need to answer questions about the setbacks.

Mr. Cisek commented that the applicants could place a rail across the top of the equipment to give it the appearance of a widows walk, or add a hip roof with shingles, as alternatives to the brick veneer.

Ms. Greenough mentioned that the applicants will be returning to the Board for another special permit, and that these changes could be incorporated into that. The applicants have asked for two separate offices and an extension to wave lengths for a massage room and full bathroom in the basement.

Ms. Greenough commented on the septic situation, and urged the applicants to install sewer. The Board stated that they would not recommend the Building Department release the project without sewer.

Mr. Sparks moved to continue the discussion to June 21<sup>st</sup> with a site visit the morning of the meeting. Mr. Cavallo seconded, and the motion passed unanimously, 5-0.

### **7:32 PM: Rights on roads and ways**

*In Attendance: Richard Brown, Paul Adler*

Mr. Brown stated that the special way Swimmingplace Path runs between his property and the abutting affordable housing parcel. David Thompson, the Wastewater Commissioner, had asked if the Planning Board would have any objections to horizontal drilling underneath Swimmingplace Path to provide town sewer to the proposed development. A special permit would be necessary.

Mr. Brown stated that the zoning bylaws pertaining to ancient ways only regulate aboveground, and that there is no mention of any restrictions below ground.

Mr. Cavallo asked if the Board had the jurisdiction to allow a special way to be torn up. Mr. Adler stated that there would be no intention of using the special way for an easement or use. He added that the work would be done using directional drilling, and that no disturbance would be detectable.

Mr. Thompson prefers the applicants to connect to the pumping station.

The purpose of the discussion was because the Wastewater Commission wanted to know if there would be any blaring issues with the proposal. Mr. Brown stated that more formal plans would be submitted before any drilling were to take place.

The Board discussed the letter to Norman Rankow; and the situation regarding the Mad Max pier.

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

The meeting was adjourned at 8:03 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>
_____
<i>Michael McCourt</i>
_____
<i>Robert Sparks</i>
Edgartown Planning Board
Date signed: _____