

# Edgartown Planning Board Meeting

July 7, 2015 at 5:30 PM

## Minutes

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

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

Chairman Michael McCourt called the meeting to order at 5:30 PM.

**5:30 PM: Public Hearing: Thomas Priore, 45 Slough Cove Rd (44-12.12) Construct a 30' x 28' garage with gym, living room and half bath above; add a two-story 39' x 25' (+/-) deck attached to the 2<sup>nd</sup> level of the garage and the 2<sup>nd</sup> level of the primary structure; and construct a half-sized basketball court.**

*In Attendance: Doug Best, Contractor*

The property is located in the Coastal District, the Ponds District, and entirely in the wetlands. The original application called for a macadam basketball court, but due to petrol chemicals leaking into the wetlands, the Conservation Commission requested the application be revised to include a concrete court. Mr. Sparks asked if the applicants had discussed the basketball court being located completely outside the building envelope with Lenny Jason. Mr. Best replied that he had, and that Mr. Jason had approved of it since he did not consider a basketball court to be a structure. Mr. Sparks asked where the closest abutter was located. Mr. Best pointed out the neighbor on the map. A line of tall trees obstructs the view, and there are no sight lines between the houses. The neighbor may be able to see some of the basketball court, but the applicants are prepared to reinforce the visual barrier with ten-foot tall trees and brush.

Ms. Greenough emphasized that the Board needs a copy of the site plan that includes the existing and the proposed stone wall, the building envelope, and the setbacks. She suggested that the Board members approve the application pending a completed site plan for the records. Ms. Greenough then read the Order of Conditions from the Conservation Commission.

Ms. Greenough read the letters: Ellen Downey wrote to the Board on July 1, 2015 to say that the proposed addition will obstruct the view from her home and reduce the value of her property located at 12 Loon Cove Way. She also claimed that a business was being operated from the premises and suggested the Board look into the matter.

Edward C. Krawiecki, Jr. Attorney, wrote to the Board on June 29, 2015 as a direct abutter with concerns that the basketball court is not only located within the rear setbacks, but is also touching the property line. He urged the Board to impose additional conditions to protect the boundary.

Mr. Best replied that Ms. Downey does not have a visual sightline to the house; and that the applicants are willing to reduce size of the basketball court, and provide fence behind the court to satisfy the requests of the Krawieckis.

There was no one present in the audience on behalf of this application.

Mr. McCourt closed the public hearing at 5:46 PM.

Mr. Sparks asked Mr. Best why Ms. Downey would claim to be able to see the house. Mr. Best said that he did not understand, and that only if trees were removed would the Priore residence cause an obstruction of the view. Ms. Greenough commented that the residence is a non-conforming structure that exceeds the height limitation. The proposed addition to the structure will not exceed the height restriction of 26 feet.

Mr. Mascolo stated that he had no problems with the application. He commented that concrete is an echo-friendly material made of limestone, sand and rocks. He suggested the applicants reduce the size of the basketball court so that there are a few feet between it and the property line.

Mr. Wilson stated that he did not have any problems with the application.

Mr. Cavallo stated that the applicants should reduce basketball court, and move it off of the property line by at least five feet.

Mr. Sparks stated that some type of fence should be installed. He recommended the dark green wire to blend into the natural vegetation.

Mr. McCourt stated that he agreed with Mr. Cavallo and Mr. Sparks about setting the basketball court back, and adding a fence.

Mr. Best agreed and said that it was the neighborly thing to do.

Mr. Mascolo moved to approve the project as presented, provided the applicants relocate or reduce the size of the basketball court to allow for a minimum of five feet to the property line, install some kind of retaining fence or barrier, and pending the submission of a corrected site plan. Mr. Cavallo seconded, and the motion passed unanimously, 5-0.

**5:51 PM: Public Hearing Continuation: Wave Lengths, 223 Upper Main St (20A-95) Modification to a SP to extend the permit for the fourth year. Violations must be resolved.**

*In Attendance: Colin Young*

Mr. Mascolo recused himself from the hearing and left the room.

Colin Young approached the Board and stated that the issues that were reported at the last hearing had yet to be resolved. Matt Poole has inspected the premises again, but has not yet sent an official letter. Mr. Young explained that the number of chairs in the salon has been reduced, which has dramatically reduced the flow to the separate tank over the years; and stated that Ms. Leaf did not realize that housing an employee in the basement was a violation of her permit. The correspondence between Ms. Leaf and the Town officials will be forwarded to Ms. Greenough. Mr. Young stated that the project will hopefully be breaking ground in October. Mr. McCourt stated that the Board would like to make sure everything is clear before proceeding with the extension, and dissuaded the Board from approving the application without verification from Matt Poole and Lenny Jason.

Mr. Wilson moved to continue the public hearing to July 21, 2015. Mr. Cavallo seconded, and the motion passed unanimously, 4-0.

Mr. Mascolo re-entered the meeting.

**6:00 PM: Public Hearing Continuation: Ann Floyd et al., 1 Dyke Rd (32-1.2) Modify Definitive Plan & Cluster Development to create two additional non-conforming lots in the remaining portion of the original Cluster Development**

*In Attendance: Ann Floyd, Doug Hoehn, Paul McDonough- lawyer, Tom Barrett- Husband, and Daughter- Leslie Floyd*

Ann Floyd approached the Board to explain the history of the property and the current predicament of wanted to conserve as much of the family land as possible, while needing to sell some in order to support the family. She was very thankful that the Land Bank was able to purchase three buildable lots and one of the common areas, and that the land will never be built upon. In order for her and her children to be able to live on the remaining family land, they need to subdivide Lots 6 and 7 into four lots. She requested that the four lots that were sold to the Land Bank be used in the density calculations for the modified cluster subdivision.

Mr. Hoehn approached the Board and submitted a copy of the cluster development bylaw, and a tabulation of calculations from the regulations as they had been applied to the subdivision. Mr. Hoehn warned that the application was confusing, and stated that he was trying to keep it simple. In March 2015, the applicants came before the Board with a Form A to divide lots 6 and 7 from the original cluster subdivision that was approved in 1998 or 1999. The current application was submitted as a modification to the previously issued cluster subdivision. He asked the Board to consider the perspective of what could have been done then, and what can be done now. He quoted the final clause of the cluster development bylaw, which states: *"A special permit for a 'cluster development' shall not be issued by the Planning Board unless the Board is satisfied that the intent and provisions of this By-Law and of Chapter 40A of the General Laws have been met."* The cluster subdivision bylaw provides a formula to calculate the number of dwelling units (Gross area, minus shore zone and wetlands equals the applicable land area; multiply applicable land area by 1.1 and divide by zoning acreage of the district equals the number of dwelling units). The exact tabulation of the number of allowable lots applied for in 1998 or 1999 could not be located. Mr. Hoehn provided a re-creation of what could have been applied for. ( $57.2 - 21.8 = 35.4 \times 1.1 = 13$ ). Mr. Hoehn's calculations showed that 13 dwelling sites would have been allowable, and showed that the applicants only built nine.

Mr. Hoehn then presented the calculations accompanying the current application which would allow for seven potential lots. He stated that there are already three lots, and the proposal is to subdivide the remaining two lots into four, to end up with a total of seven lots, which is fewer than the original nine.

Mr. McDonough mentioned that an amendment to the conservation restriction had been made. The amendment prohibited the former common areas from being included in the density calculations. The applicants had provided a plan from March 19, 2015, that showed all of the land to be used in the computations, Lots 1-4 were included.

Mr. Hoehn stated that the original intent and calculations of the first application still apply, and that through a modification to the original permit, the applicants are entitled to the two extra lots. He stated that by taking the new information and the amended conservation restriction into account, either scenario can apply numerically.

Ms. Greenough stated that she also calculated the number of dwelling units using the same formula and arrived at a different answer. Mr. Hoehn reviewed Ms. Greenough's calculations and noticed that she did not include Lots 1-4 that had been sold to the Land Bank.

Mr. McCourt asked if any letters were received or if there was anyone present in the audience on behalf of this application. There were not.

Mr. Hoehn stated that Mr. McDonough had amended the conservation restriction to allow for Lots 1-4 to be included in this calculation. Ms. Greenough commented that the conservation restriction has nothing to do with zoning.

Ms. Greenough read the conservation restriction.

Mr. Hoehn explained that the intent behind the modification to the restriction was to remove the old subdivision common areas going forward for density calculations.

Mr. Mascolo stated that Mr. Hoehn has proclaimed that the land sold to the Land Bank can be used in these calculations. He stated that he, therefore, did not see a problem using the Land Bank land in the density calculations. Mr. Mascolo said that the Floyd property has been before the Board many times, and that this application would be the end to any future modifications made to the properties. He declared that he felt much better about the application now that it had been presented by an engineer, and knew that the computations were correct. He stated that he did not know if it was allowable, but that he was inclined to approve the application because it was presented by an engineer and that it would be the final subdivision of the property.

Mr. Wilson commented that he has never seen another property as nice as the Floyd land. He was excited that the Land Bank owned the best part, and that it was available to everyone. He noted that each lot would have access from Dyke Rd.

Mr. Cavallo stated that he was confused by the application, and whether or not the Board had the power to approve it. Mr. Mascolo stated that Mr. Hoehn is an expert, and should be taken at his word. Mr. Mascolo said that he believed the applicants are asking for a grantable proposal based on what has been presented.

Mr. Wilson stated that he was comfortable with the proposal knowing that the houses that would be built on the lots will be smaller, minimal homes.

Ms. Greenough stated that because the wording of the restriction is easily interpreted different ways, she recommended that the Board boil it down to common sense. The land in question has been sold to the Land Bank; it is no longer owned by the applicants. She stated that since the land is no longer in their possession, it cannot be used to define the density calculations. She argued that at the very least, the wording is open to interpretation and should be examined before a decision is made.

Mr. McDonough stated that the transaction of the sale of the land to the Land Bank occurred in conjunction with this app, and that the applicants did specifically reserve the right to include Lots 1-4 for the density calculations. He detailed that Article 10 talks about the conveyance to the land conservation organization, intent and language.

Mr. Cavallo stated that because this becomes an arguable point, he would prefer Town Council look over the documents. If they decide that Lots 1-4 cannot be included in the calculation, then the application will need to be revised.

Ms. Greenough read a letter from Paul Foley at the MVC dated June 8, 2015. He stated that he was unsure as to whether or not the underlying zoning applies to the proposal. Ms. Greenough claimed that there is a difference in opinion.

Ms. Sparks thanked Ms. Floyd for the heartfelt background. He stated that it is rare for a piece of land to remain in a family as long as it already has, and stated that he felt inclined to allow the family to keep as much land as possible. However, he was concerned about the legality of the application, whether or not further subdivision is permissible, the creation of more undersized lots, and the ultimate purpose of Lots 1-4.

Ms. Floyd said that the purpose of this application is so that the family can continue to share the legacy by continuing to live on the land that has been in the family for generations.

Mr. Sparks noted that all of the lots are undersized, since they were originally in a cluster subdivision, which allows for the creation of smaller lots.

Mr. Hoehn clarified that undersized lots are not necessarily non-conforming lots, and he also added that nothing in the original permit restricts against further subdivision.

Mr. McCourt commented that if the application was done this way originally, it would not be an issue today.

Mr. Sparks stated that this is a rare and special situation, and asked if the Board had authority to authorize the application.

Mr. McDonough stated that the Planning Board subdivides land that is not prohibited by an agreement under broad statutory powers. He said that the land now subject of the conservation restriction, as amended, cannot be used for calculations of density, but that Lots 1-4 were excluded from the conservation restriction.

Ms. Greenough stated that this situation is the result of the sale to the Land Bank. She displayed Exhibit B and Exhibit C from the conservation restriction, which do protect against further subdivision.

Mr. McDonough explained the process of the sale of Lots 1-4 to the Land Bank closed on March 31, 2015. He stated that he would have preferred to have filed this application with the Board before the sale of the lots, but due to money constraints, the sale needed to take place when it did.

Mr. Hoehn stated that the intent behind the application is clear, and that this subdivision ends up with fewer lots, seven, than the original application, nine which could have been 13.

Mr. McCourt closed the public hearing at 6:47 PM. The board deliberated.

Mr. Cavallo stated that Edgartown bylaw 12.8 is written clearly, and that he approves of the intent and provisions of the application.

Mr. Mascolo commented that this application is a nice ending to a long process. He was excited that the island public will get to use the Land Bank properties. He commented that the Floyd family made some money selling to the Land Bank, but far less than the actual value of the property.

Mr. Cavallo stated that the decision was not about money, but about intent.

Mr. Mascolo stated that Mr. Hoehn is an expert in his field and has never presented a fraudulent proposal. Mr. Mascolo said that he approved of the application because it was presented by Mr. Hoehn.

Mr. Sparks commented that experts come and go, and disagree with each other. He stated that he was swayed by the explanations as presented, and could not think of a better use of the property.

Mr. Wilson stated that he was delighted when he found out that a portion of the Floyd property had been sold to the Land Bank. He said that by looking at the big picture, he did not see any problems with the application. He commented that there will be no developers, and that any houses built on the property will be modest and in keeping with the neighborhood.

Mr. McCourt was concerned about setting a precedent with this application, but claimed that it would be difficult, since it is such a rare and unusual situation. He stated that the intent to use Lots 1-4 in the cluster modification calculations had been stated from the beginning of the sale, and believed that the intent behind that transaction should still apply.

Ms. Greenough commented that section 12.5 of the bylaw states that each application needs a team of professionals, and asked who the applicants had hired. Mr. Hoehn replied that the current application is a modification, and that the original team of professionals, Mattlock Associates and USGS Contours, still applied.

Mr. Hoehn stated again that the original application was unobtainable, and that he recreated the data and calculations as best as he could.

Ms. Greenough asked about the archeological review as mandated by the MVC. Mr. Hoehn replied that the condition for an archeological review is still in place, but is needed prior to obtaining a building permit, not before the subdivision application.

Mr. Sparks moved to approve the application to modify the cluster subdivision to create four lots from two, with the archaeological study on all buildable lots as mandated by the Planning Board and the Martha's Vineyard Commission. Mr. Mascolo seconded, and the motion passed unanimously, 5-0.

**6:58 PM: Discussion: MRK Mullen Realty LLC, 19 Mullen Way (29A-57 & 29A-97) Discussion of signed Definitive Plan decision condition.**

*In Attendance: Ina Andre*

Ms. Andre approached the Board to give a brief update on the Kidder subdivision. She stated that work began in late May and that the subdivision roads and the turn-around have been created. She stated that the general public is welcome to use the turn-around at their convenience. The applicants have already informed the police and fire departments. Ms. Andre said that the next step of the subdivision is installing the water main and fire hydrants, and that the materials are on-site. The applicants are currently waiting for an easement to be granted from American Tower, and are expecting to hear soon.

Proceed, and water will be done with fire safety available for Mullen Way. Ms. Andre stated that the construction workers are not using any excavation or cement trucks in July and August. Danny Rogers will be using a landscaping truck with a trailer to transport the pipes to North St where the work will begin. She estimated that there will be a maximum of three trips sometime around August 15<sup>th</sup>, and that the work will be done in one or two days.

Dennis McAndrews, a resident on Mullen Way, stated that there has been excavation equipment on Mullen Way that has been causing an unpleasant experience. Some of the problems he listed included knocked over stones, signs that were hit, ruts created on properties, as well as traffic congestion. He stated that there are times when residents cannot even enter or exit the street. He said that from the beginning, the Board had promised there would not be any excavation or heavy equipment in July or August, and that it was dangerous and inappropriate.

Ms. Greeough stated that she did some research, and found that there is a different construction project, on the Phillips property, further down Mullen Way with a different a developer and builder. Ms. Greenough said that she has spoken with Rob Young and Danny Rogers, and that they both confirmed that there has been no work done since July 2 and that they have not been to the site since.

Mr. McAndrews disagreed.

Ms. Greenough said that the construction equipment being complained about is probably from the work being done on the Phillips property.

Mr. Sparks asked what kind of truck would be used to carry the pipes. Ms. Andre replied that a Ford F550 with a trailer will be used, and stated that the accusations against the applicants are not true. Ms. Andre stated that the contractor is conscientious and careful, and that if he were to damage anything, he would take care of it. She also added even if he had been to the site, the trailer is so low that there is no way he could have turned the sign. She reiterated that there is another project going on further down the street.

Mr. McAndrews stated that a truck with a trailer is a problem that creates a public safety hazard.

Mr. Cavallo stated excavation and heavy equipment does create a public safety hazard during the summer months, which is exactly why the restrictions are in place. He stated that Ms. Andre and the Kidders are not in violation of any restrictions. He stated that the Board will bring the complaints to the attention of other authorities, but was unsure what action could be taken at this meeting.

Mr. Sparks stated that the new water system is going to benefit the entire neighborhood.

Ms. Andre stated that she was present before the Board to report on the progress of the project; and commented that the developer and the construction crew are extremely sensitive and sensible.

Mr. McAndrews reiterated that he was concerned about large trucks and trailers.

Mr. McCourt stated that he believed the applicants are working within the conditions of the special permit. He commented that the Kidder project is under the microscope, and added that any member of the public is welcome to voice their concerns to Ms. Greenough or Mr. Jason, or to Ms. Andre and Mr. Kidder, and does not need to wait for a meeting to be heard.

David Young, a resident on Mullen Way, commented that if trucks are allowed to use the turn-around, the applicants need to remove the private property signs posted on the new road.

Ms. Littlejohn asked about the Conservation Commission and the National Heritage Endangered Species Program. Mr. Hoehn stated that NHESP had sent a preliminary letter, the boundary has been set, and that the applicants have satisfied all of the conditions.

Mr. McCourt restated that if residents are having concerns or noticing problems, they can always report to Ms. Greenough or Mr. Jason.

Ms. Littlejohn stated that she feel the residents of Mullen Way feel in the dark about the Kidder project.

Ms. Greenough stated that all of the conditions are listed in the decision.

**7:17 PM: Form A: Kruppers LLC/Nadelstein, Puwal Lane (36-99.62, 158.1, 158.2, & 373) Re-divide four parcels**

*In Attendance: Doug Hoehn*

The Board was familiar with the property as Mr. Hoehn had come before them before. Mr. Hoehn stated there are currently four non-conforming lots, but will be made conforming by the lot line adjustments made in the application. Each lot will have 50 feet of frontage. There will be a joint driveway for the back lots to share. Lot 1 has its own driveway. The applicants are assessing whether or not to demolish or completely renovate the structure on Lot 3.

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

**7:25 PM: Form A: Bernstein, 10 Milikin Way (36-342) Divide a 4.6 acre lot into two parcels**

*In Attendance: Chuck Gilstad*

The application before the Board is a 4.6 acre parcel to be divided into two parcels in the R-60 district with 1.5 acre zoning. Mr. Mascolo assured the Board that the road is adequate for the two parcels. Mr. Mascolo moved to endorse the Form A as presented. Mr. Sparks seconded, and the motion passed unanimously, 5-0.

The next meeting has been scheduled for July 21, 2015 at 5:30 PM.

Mr. Cavallo moved to adjourn. Mr. Sparks seconded, and the motion passed unanimously, 5-0. The meeting was adjourned at 7:35 PM.

Respectfully submitted, Lucy Morrison, Clerk

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