

Edgartown Planning Board  
Tuesday, September 2, 2014 at 5:30 PM  
Town Hall – Selectmen’s Meeting Room – First Floor  
Minutes

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

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

Chairman Fred Mascolo called the meeting to order at 5:30 PM.

**5:30 PM: Clark Realty Trust, 169 & 189 The Boulevard (11A-399.2 & 11A-481) SP: Coastal District – Construct 20’ x 40’ swimming pool**

*In Attendance: Richard Barbini and Ted Rosbeck*

Mr. Barbini approached the board with Mr. Rosbeck, the owner of the property. The property consists of two lots, totaling 4.8 acres in the R-20 residential district. The lots are not officially merged at this time, but will be in the future. There is a four-bedroom house on lot 11A-481, and an existing building permit to build a full scale two-bedroom single family house on 11A-399.2. The application before the Board is to exchange the house approval for a pool. The pool house will be a one-bedroom dwelling and the existing house will become a five-bedroom. Mr. Barbini stated that the pool house is essentially a guesthouse, which does not require a special permit, and is not being voted upon. It will house the pool equipment on the back side of the first floor, which faces the existing house, and will have a kitchen and sleeping quarters on the second floor. The pool was staked as a large rectangle to show the edging, instead of the oblong pool shape on the site visit. The proposed pool is 100 feet out of the wetland zone, and is within the setbacks of the property. A full landscaping plan, except for a lighting plan, was submitted to the Conservation Commission. There will be two downward shielded, low-voltage lights installed per code; and there will be no motion sensor flood lights, without approval from the Conservation Commission. A stockade fence will be constructed along the road, as well as additional vegetative screening. Fencing will also run along the retaining wall to a height of at least four feet. There will be no impact on the view from the Boulevard, or from the pond, or from Beach Rd, as there is heavy brush on the pond side of the property, as was noted by the Board on the site visit.

Mr. Cavallo inquired about the proximity to the closest abutter. The applicant replied that the closest neighbor is across the street. Mr. Mascolo asked about the use of soundproofing material in the construction of the pool equipment location. The applicants responded that the pool equipment will be enclosed on the back side first floor of the pool house and will be soundproofed. The applicants answered the rest of the requirement checklist: the pool will be heated with propane, will have a salt treatment system, life-saving equipment will be readily available, and no water will be drawn from Sengekontacket pond. Mr. Cavallo asked how the pool will be treated in the off season. The applicants answered that the water level will be dropped about a foot, and then the pool will be covered with a winter-safe pool cover. No one in the audience was present to speak either for or against the project. Ms. Greenough read the letters received from the abutters. Shirley Craig wrote on August 14<sup>th</sup> with

concerns of nutrient loading and loss of necessary habitat in the Sengekontacket watershed, stating that Sengekontacket is an irreplaceable asset to Edgartown. She asked the Board to consider the impact and maintenance of increased construction in such a fragile zone. The applicants stated that the Conservation Commission had declared credible and irrefutable evidence that the pool would not conflict with the interest of the wetlands bylaws, and conforms to the comprehensive management plan for Sengekontacket pond.

Ellen and Richard Price wrote on August 21<sup>st</sup> with concerns for the enforcement of the wetlands bylaws, stating that a luxury pool should be a violation of intent due to the encroachment of wetlands, the use of water and the drainage of pool effluent. Charles and Eva Carlson wrote on August 29<sup>th</sup> to agree with the Prices, and to comment on the cumulative degeneration of the Sengekontacket watershed. The Carlsons also stated that the development provides no benefit to the public, and should be denied. Mr. Barbini presented the Conservation Commission approval letter. Mr. Rosbeck explained that the pool will not contribute any nitrogen to the pond, and that it will be filled using Town water.

Mr. Mascolo asked about nitrogen, and other negative contaminants that could be introduced to the pond. Mr. Barbini explained that an enhanced septic system has been installed and will be tied in to the main house and the pool house. The enhanced system will reduce the overall amount of nitrogen and will be more effective than what is already installed. The discharge of pool effluent will not cause any issues. The chlorine levels subside after two to five days of exposure to the air, and the salt treatment will automate the chlorine levels. The pool effluent will essentially be fresh water that is added back into the ground; and the pool water will only be dropped by about a foot per year. Mr. Wilson asked about other housing restrictions in terms of irrigation, use of fertilizer and other landscaping procedures. Mr. Rosbeck replied that those are big issues with the Conservation Commission and everything is standard for the area.

Mr. Mascolo closed the public hearing. Mr. Sparks stated that a building permit had already been issued for the property in question, for a house to be built, which would include bathrooms and faucets, and would cause much more stress on Sengekontacket pond than a pool. The pool will be filled once, using Town water, and lowered by a foot each year. There will be a net loss in nitrogen added to the pond each year, and no gray matter. There will be no effect on the view from the road or the pond or the beach caused by the pool. Mr. Sparks stated that the public demanded that the Board enforce restrictions outside of its jurisdiction on the Edgartown Lofts project. He stated that properties have rights, and public hearings are democratic; but public benefit is not a requirement for an applicant to meet for approval of a project on private property. If the project falls within the permitted use, the Board does not have the right to deny the application simply because it does not provide any benefit to the public at large. The pool will not be seen, and will not stress the watershed. Mr. Sparks stated that there were no legitimate reasons to deny the project.

Mr. Wilson commented that this location appeared to be one of the better places to install a pool on the Boulevard, especially since it will be fully screened, and will have no effect on the Sengekontacket watershed. Mr. McCourt stated that the Conservation Commission has been informed of and approved this project as proposed. He stated he trusts the Commission's opinion of the project as the governing

body for the protection of natural resources. Mr. Cavallo agreed, stating that the pool is within the setbacks, is out the wetlands and the property now has a mitigated septic system. Mr. Mascolo also commented on the mitigated septic system, stating that when working properly, it will have the impact equivalent of a two-bedroom residence as opposed to a six-bedroom residence, and will be an overall gain for the area.

Mr. Cavallo moved to approve the pool application with the standard pool conditions, including additional soundproofing, and accessibility to life saving equipment, as well as the Conservation Commission conditions. Mr. Cavallo stated that the pool is within the setbacks, does not infringe on the wetlands, will not affect views either of the pond or from the pond, and has less of an impact on the Sengekontacket watershed than what is currently permitted. Mr. McCourt seconded, and the motion passed unanimously, 5-0.

**6:09 PM: Form A: Kelley House, 24 Kelly St. Reconfiguration of Assessor's Parcels 20D-301, 20D-298.1, & 20D-300. No additional lots created.**

*In Attendance: Doug Hoehn*

Mr. Hoehn dropped off the application fee to the PB Assistant. Mr. Hoehn presented the application by saying the Kelley House had sold 55 N. Water St in March 2014. There are 3 residences as part of the campus. Kelley House Hotel has two buildings and little spot. This property is divided between R5 and B-I. The dividing line is located between 20D-31 and 47 North Water St down to Dock St. The existing U-shaped lot wraps around Lot 47-55 (51 North Water St). All three residences are conforming to R5, 5 feet of frontage and meets setbacks, allowing them to sell the lots. They anticipate removing a non-conforming shed which might be historic, and they may need to keep it. Adding 47 N. Water St. to Kelley House campus might trigger a referral to the MVC because it is a division of commercial property. The buildings predate subdivision restrictions. The three residences blend in with North Water St which is more residential than commercial.

Kelley House's Master plan is to renovate remaining property using the funds from the sale of the two properties. There shall be no net change in the rooms at the hotel. The pub, The Newes will remain in place. All setbacks are in compliance. This does not create any interference in the Chappy ferry line. They are not asking for additional curb cuts.

Coo moved to endorse the Form A. It has adequate frontage for all parcels. Mike McCourt seconded, and the vote was unanimous 5-0. The Board signed 1 mylar original and 2 copies.

**6:20 PM: Form A (Discussion): Susan Clark, 139 Meetinghouse Way (37-47) Divide lot into 5 lots.**

*In Attendance: Doug Hoehn, Susan Clark*

Mr. Hoehn distributed aerial photographs of the property. A site visit was conducted the morning of the meeting. The purpose of this discussion is to receive feedback from the Board before the plan is prepared. The idea of the plan is to subdivide a 54 acre parcel into five lots of approximately 10 acres each.

The Board commented that the road, known as Division Rd (aka Henry's Path), was in excellent condition. Mr. Hoehn explained that Division Rd is a private road with public access, and has been in

existence since at least 1973. It is currently maintained by Dickie Brown and Burt Ross, as per an agreement with Land Court. At one point, it was blocked by a gate, but so many complaints were filed that the owners consented to weld the gate open. However, there is no official agreement to maintain the road. The Board is apprehensive of approving a project without plans for road maintenance and suggested forming a road association to handle the maintenance. The Board agreed that the current condition of the road is ideal. The Board also explained that any owner of the road can improve it without permission from the other owners, and improvement or grating does not require an agreement between the parties. After the lots have been sold, however, it would be helpful to have an existing agreement in perpetuity stating responsibility for the road. Mr. Mascolo stated that it is important to maintain the road for emergency vehicles. The Board agreed that additional protection for the quality and frontage of the road in an agreement is important before the lots are further subdivided.

**6:28 PM: Form A (Discussion): Glen Hutchins, 375 Katama Rd (45-122) Divide into two lots off Katama Rd using Mapes Avenue as access. (Mapes Ave in existence prior to Subdivision Act Land Court)**

*In Attendance: Doug Hoehn*

Mr. Hoehn explained that this lot is part of the old Katama Farm subdivision, and that the driveway is actually Mapes Ave. The owner would like to divide the property into two lots, but will not be adding another curb cut from Katama Rd. Both lots will be conforming. Both properties will be using the existing driveway. This lot is under the jurisdiction of both Land Court and Registry of Deeds. Mr. Sparks stated that the driveway/private road appeared to be adequate for the division into two lots.

**6:32 PM: Form A: Michael Kidder, 23 Mullen Way (29A-57); 19 Mullen Way (29A-97) Create three lots from an existing two lots.**

*In Attendance: Doug Hoehn, Michael Kidder, Michelle Cassavant*

Mr. Hoehn stated that the bulk of the property is registered Land Court property. The plans insinuate that the larger piece of land in the back could potentially be developed at a later date, and a 40 foot access to the back lot remains. The property falls within ½ acre zoning, and there is plenty of frontage onto Mullen Way. Mullen Way is a narrow, 17 foot, public road, with no further easement required. There are currently existing two lots, and this subdivision will create three. Mr. Kidder stated that he hasn't finalized any plans for the front lots, but that it allows for more room to access the much larger back lot. The Board had no questions or concerns. Mr. Sparks moved to endorse the Form A as submitted because of the adequate frontage. Mr. Wilson seconded and the motion passed unanimously, 5-0.

**6:41 PM: Discussion: Wave Lengths, 223 Upper Main St (20A-95): Request a modification to a special permit in B-II Business District.**

*In Attendance: Jane Leaf, Colin Young.*

Mr. Macolo stated that he works in real estate and represents the applicants, and therefore will be recusing himself from the discussion. Since this is a preliminary discussion and nothing will be voted upon, it was decided that Mr. Mascolo would sit in the audience.

Mr. Young approached the Board and explained a brief history of the Wave Lengths project. There were two owners in disagreement, and a suit that landed briefly in Land Court. Ms. Leaf bought out the other partner and has become the sole owner of the business. The application to be presented to the Board at

a later meeting will be a modification to a special permit for a change of use from commercial space to residential space for the second floor. It has become apparent that it is not financially feasible to have more commercial space, and would be much more viable as apartments. A sample floor plan showed the conversion of the two offices to two two-bedroom, 975 square foot apartments with 1 ½ baths. The designs have not been finalized. The location of the windows may change. Parking would remain the same, as there is less parking required for residential space than commercial space. The Board inquired whether the apartments would be rented or put up for sale as condominiums. The applicants responded that initially the units will start off as rentals, but will ultimately be sold as condos when a buyer shows interest.

The MVC previously restricted the property to be year-round rental, if ever converted to residential space. There will be no short-term rentals. Since the property has been determined to be a Development of Regional Impact, the application must officially come before the Planning Board to be referred to the MVC. Once the MVC has held a public hearing for the minor modification, the application comes before the Planning Board for a final decision. The Board assured the applicants that the process is not as complicated or time consuming as it may sound, especially since the changes fall within the confines of a minor modification, and the footprint of the building is not being changed.

**6:52 PM: Edgartown Lofts/Hajjar/Haven Realty Trust. Review final decision with conditions.**

*In Attendance: Sean Murphy*

Ms. Greenough explained to the Board that the Edgartown Lofts application was approved at the last meeting, pending conditions, so technically the hearing was continued because the conditions hadn't been presented. The conditions were discussed throughout the hearings, but were not finalized. Since the law requires a decision be filed within 14 days of approval, this meeting will be the formal adoption of the approved decision.

Ms. Greenough proceeded to review the list of conditions with the Board and Mr. Murphy. The following changes were made:

1. "The decision was signed" was added to the first paragraph
2. An explanation that the application was approved, subject to formal findings was added to the *Procedural Record*.
3. The word "abutter" was added to *Findings Section A, List Item 2*.
4. A typo was corrected in *Findings Section B, List Item a*.
5. "There will be no impact on traffic from the eight additional cars based on the MVC traffic study" was also added to *Findings Section B, List Item a*.
6. "Deborah Ryan" and "handicapped access is not required" were added to *Findings Section B, List Item b*.
7. "Neither the applicant nor the Board can control market rate" was added to *Findings Section B, List Item c*.
8. "Pedestrian and bicycle access shall also be improved" was added to *Findings Section C, List Item 1*.
9. "Than what was originally proposed" was replaced with "as modified" in *Findings Section C, List Item 2.a*.
10. A comma and "and bicycle" was added to *Findings Section C, List Item 2.e*.
11. "This is not applicable to this application as the structures already exist" was replaced with "The new plan promotes more aesthetically pleasing view, and is in keeping with the existing neighborhood" in *Findings Section C, List Item 2.f*.
12. A comma and "almost twice the number required" was added to *Findings Section C, List Item 4*.

13. "Are no additional" was replaced with "will be an additional... offered by the applicant" in *Findings Section C, List Item 7*.
14. The word "already" was added to *Findings Section C, List Item 8*.
15. Inches were changed to feet in *Findings Section C, List Item 9*.
16. The word "Completed" was moved to the end of the first sentence in *Conditions, List Item 2*.
17. "Prior to 14 days before building permit application" was added to *Conditions, List Item 4*.
18. "Commission" was changed to "Department" in *Conditions, List Item 5*.
19. The *10th Condition* was removed.
20. "Site plan for the location of construction vehicles" was removed from the *13th Condition*.
21. "Or two adults" was added to the *23rd Condition*.
22. The word "each" was replaced with "at" in the *24th Condition*.

Mr. Cavallo moved to approve the findings and conditions as modified. Mr. McCourt seconded, and the decision was unanimously approved, 5-0.

Mr. Mascolo mentioned that he recently spent about 45 minutes in the Morning Glory Farm parking lot, and did not see a single person use the new exit, and saw no signage to indicate the new configuration. Ms. Greenough replied that the lot is not finished yet, and that the issue will tentatively be discussed at the next meeting on September 16. Mr. Mascolo also commented on the work performed by the assistant with the conditions and decision of the Edgartown Lofts project. Ms. Greenough stated that the Board handled the hearings perfectly, and that Mr. Murphy helped provide better wording to protect the Board and its arguments.

Mr. Sparks moved to adjourn. Mr. McCourt seconded, and the meeting was adjourned at 7:52 PM.

Respectfully Submitted,

Lucy Morrison  
Planning Board Clerk

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*Fred Mascolo, Chairman*

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*Robert Cavallo*

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*Michael McCourt*

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*Robert Sparks*

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*Alan O. Wilson*

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