

Edgartown Planning Board - Meeting Minutes

Tuesday, December 14, 2021, 5:30 PM

The Edgartown Planning Board scheduled a meeting for Tuesday, December 14, 2021, 5:30 PM.

The meeting was audio and video recorded. Attendees participated by video conference, in accordance with Chapter 20 of the Acts of 2021. All supporting materials were provided to the members of this body and made available on a publicly accessible internet website. Members of the public were able to access the site, using the instructions included in the Meeting Agenda. The public was encouraged to follow along using the posted agenda. Deviations from the agenda, if any, were noted.

CALL TO ORDER

The meeting was called to order at 5:36 PM, and the roll was called:

PRESENT:
LUCY MORRISON MIKE MCCOURT
JAMES CISEK (ALT)

A quorum was declared.

SCHEDULED BUSINESS

5:30 PM – PUBLIC HEARING – PROPOSED CHANGES TO ZONING BYLAW

The Edgartown Planning Board held a public hearing on Tuesday, December 14, 2021 at 5:30 PM, to receive public comment on proposed changes to the Edgartown Zoning Bylaw.

The public hearing was noticed and conducted in accordance with Section 5 of Chapter 40A of the General law.

The hearing was opened at 7:38 PM.

1 – Coastal District DCPC Exemption

Mr. Finn recommended no action, as the language was still subject to further revision by the MV Commission. The board concurred. No further action will be taken.

2 - PROPOSAL: To consolidate SPGA requirements under the Planning Board where more than one special permit is required for a proposed development.

Mr. Finn read the proposed warrant ARTICLE:

To see if the Town will AMEND the Edgartown Zoning Bylaw by adding Section 17.7.D as follows:

17.7.D Notwithstanding any other section of this Zoning Bylaw, where proposed development on any lot requires a Special Permit under this Zoning Bylaw from more than one Special Permit Granting Authority, the Planning Board shall be the Special Permit Granting Authority for all proposed development on the lot.

or take any other action relative thereto.

Mr. Finn noted that this addition was intended to codify current practice. There were no comments or questions.

3 - PROPOSAL – to align various sections of the zoning bylaw, referring to "flat" and "pitched" roofs with consistent terms. This is intended to provide clarity only, and not introduce a substantive change to current practice or understanding.

Mr. Finn read the proposed warrant ARTICLE:

To see if the Town will AMEND the Edgartown Zoning Bylaw, Section 1.3, "Definitions", by ADDING the following definitions in appropriate alphabetical order:

Roof, Flat: For the purposes of this Zoning Bylaw, any section of roof with a slope not more than three inches over twelve inches (a "three pitch", or a 3:12 pitch).

Roof, Pitched: For the purposes of this Zoning Bylaw, any section of a roof with a slope or pitch greater than three inches over twelve inches (a "three pitch" or a 3:12 pitch).

and to further amend the Edgartown Zoning Bylaw, section 2.4.E, "Height of Structures", as follows:

Maximum height of structures as measured vertically from the Mean Natural Grade in the same area of the proposed structure shall be as follows: 26 feet for a **Pitched Roof** *pitched roof* and 18 feet for a **Flat Roof** *flat or shed roof with a slope of 4 in 12 or less*.

The Zoning Board of Appeals may grant a Special Permit to increase the height of a structure to a maximum of 32 feet in specific instances. In considering a Special Permit the Zoning Board of Appeals shall require the applicant to:

- (1) Provide evidence that *a structure higher than 26 feet for a pitch roof and 18 feet for a flat or shed roof with a slope of 4 in 12 or less* **the structure as proposed** would not extend above the average height of vegetation, as accurately measured on site, that would exist around the structure after construction; and
- (2) demonstrate graphically that the finished structure exposed by likely tree clearing would not be prominently visible from other public or private lands or water bodies.

and to further amend the Edgartown Zoning Bylaw, section 5.1.E.1 as follows:

Height of Structures: Maximum height of structures as measured vertically from the Mean Natural Grade level shall be as follows: 26 feet for a **Pitched Roof** *pitched roof* and 18 feet for a **Flat Roof** *flat or shed roof (which is a roof with a pitch of 1 in 4 or less)*. The Planning Board may grant a Special Permit to modify the height restrictions of the Coastal District, up to the maximum allowed in the underlying Zoning District, in specific instances, if it finds such modification consistent with the character of the neighborhood.

and to further amend the Edgartown Zoning Bylaw, section 5.2.A.3.c as follows:

c. Height of Structures

Except by Special Permit, the maximum height of structures as measured vertically from the Mean Natural Grade shall be **twenty-six feet for a Pitched Roof, and eighteen feet for a Flat Roof.** *as follows:*

- a. ——— 26 feet for a pitched roof and 18 feet for a flat or shed roof (which is a roof with a pitch of 1 in 4 or less).*

And to further amend the Edgartown Zoning Bylaw, section 10.1.C.1 as follows:

10.1.C.1. Height of Buildings and Exception

The height of any structure created in any district shall not exceed thirty-two feet for a **Pitched Roof** *pitched roof* or twenty-four feet for a *flat roof* **Flat Roof**. *Any roof with less than a four inch pitch per foot will be considered a flat roof.* However, these dimensions may be exceeded by special permit so as to conform to the average height of existing principal buildings fronting on the same street or within 500 feet of the premises.

Mr. Finn noted that the intent is not to change the intention or practice, but simply to clean up the language in the zoning bylaw for clarity and consistence. There were no further comments or questions.

Fred Mascolo joined the public meeting at 5:45 PM.

4 – ADD SECTION 10.1.K, “Boundary Tree Protection Bylaw”, which will adjudicate proposals to remove large trees prior to or during any division of land or development activity on the lot; this is intended to protect and preserve larger trees within the non-buildable setback areas of residential lots.

Mr. Finn read the proposed bylaw:

ARTICLE: To amend the Edgartown Zoning Bylaw, Section 1.3, by adding the following definitions in alphabetical order:

Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

Diameter at Breast Height (DBH): The diameter of a tree trunk four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Invasive Species: Any plant listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.

Protected Tree: Any existing tree with a DBH of four (4) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species of trees shall not be considered Protected Trees.

Tree Removal: Mechanical demolition of a living tree, or any act (1) that has caused a tree to die within the previous 12 months or (2) is likely to cause significant decline or death as determined by the Reviewing Agent.

Tree Save Area: The area surrounding all Protected Trees, sufficiently large to ensure the health of the Protected Tree(s), including their trunks, crowns, and root systems.

Tree Yard: The minimum front, side and rear yard setback area of a parcel in a residential zoning district as specified in the Edgartown Zoning Bylaw.

And further, by adding Section 10.1.K – "Tree Yard Protection and Preservation" as follows

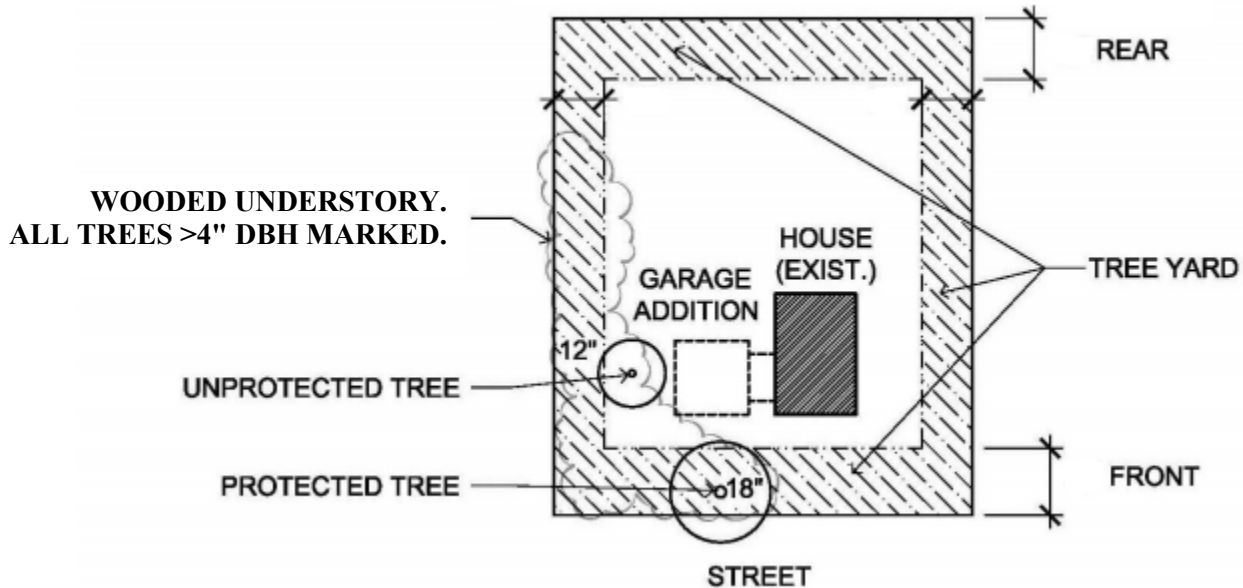
1. **Intent and Purpose:** The intent of this section is to preserve and protect sizeable trees on portions of private property during significant demolition and/or development activity.

Trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, and provide natural privacy to neighbors.

2. For the purposes of this section, the Reviewing Agent shall be the Edgartown Building Inspector or her designee.
3. In any residential district, it is prohibited to remove a Protected Tree from the Tree Yard of a lot
 - a. Within 24 months of an application for division of a lot into two or more parcels, where the protected trees are within the Tree Yards of the resulting parcels.
 - b. Within 12 months of an application for the demolition of, or a building permit for any structure with a footprint of 240 square feet or greater;
 - c. Within 12 months of construction of any building or structure on a vacant lot; or
 - d. Within 12 months of construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area by 50% or greater, excluding basements, open or screened porches and decks.
4. The requirements of this Tree Bylaw shall not apply to:
 - a. Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR) and/or the Edgartown Wetlands Protection Bylaw;
 - b. Public Shade Trees pursuant to Chapter 87 of the General Laws;
 - c. Emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent and/or the Town Tree Warden;
 - d. Trees severely damaged as the direct result of a natural disaster, as determined by the Reviewing Agent and/or the Town Tree Warden;
 - e. Trees that are hazardous as determined in writing by a Certified Arborist, and confirmed by the Reviewing Agent and/or the Town Tree Warden;
 - f. Trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist, and confirmed by the Reviewing Agent and/or the Town Tree Warden;
 - g. Trees authorized for removal by the Special Permit Granting Authority after public notice and hearing conducted in accordance with Section 11 of Chapter 40A of the General Laws, and Section 17 of this Bylaw.
5. For the purposes of this section, the Planning Board shall be the Special Permit Granting Authority.

or take any other action relative thereto.

The following illustration was provided as part of the explanation process, but was not intended to be included in warrant article:



Question: does the proposed language impact the duties of the Tree Warden? Mr. Allan Debettencourt noted that it would not, and that he supported the amendment, as it could help to prevent clearcutting of proposed development areas.

No further questions were raised.

5 – ADD SECTION 10.1.L, “Swimming Pools”, which will define swimming pools that meet certain requirements as a minor accessory use and a non-habitable, minor accessory structure to a principal dwelling on a lot; this is intended to reduce the regulatory burden on homeowners and developers, speed the permitting of swimming pools, and provide for reasonable regulation in the interest of the public good.

Mr. Finn read the proposed warrant ARTICLE:

ARTICLE: To see if the Town will AMEND the Edgartown Zoning Bylaw by adding Section 10.1.L, “Swimming Pools”, as follows:

10.1.L - SWIMMING POOLS

Edgartown believes that swimming pools are a reasonable way to enhance the enjoyment of a private residence, can add value to a property, and be a benefit to the residents and their guests.

For the purpose of this section, swimming pools that meet the requirements of this section shall be considered a minor accessory use and a non-habitable, minor accessory structure to a principal dwelling on a lot.

A self-contained hot tub, when placed at ground level on a platform or pad with a footprint of less than 144 square feet, shall not constitute a structure, and shall be exempt from this section.

The following regulations shall apply to the construction and operation of all swimming pools:

1. **Permitting and Enforcement:** Notwithstanding any other section of this zoning bylaw, swimming pools shall be permitted on residential lots as follows:
 - a. in the R5 district, lots of at least 7,500 square feet (75% of minimum lot size)
 - b. in the R20 district, lots of at least 12,000 square feet (60% of minimum lot size)
 - c. in the R60 district, lots of at least 36,000 square feet (60% of minimum lot size)
 - d. in the R120 or RA120, lots of at least 60,000 square feet (50% of minimum lot size)
2. **Special Permit Granting Authority / Building Permit:** When required, Special Permits for swimming pools shall be issued by the Planning Board, and enforced by the Building Inspector. A building permit is always required for any swimming pool.
3. **Public swimming pools:** Swimming pools proposed for any lot in a business district, intended to serve transient residential facilities, or “shared pools” (pools intended for regular unlimited access by the occupants of more than two dwelling units), shall in all cases require a Special Permit.
4. **Criteria for Swimming Pools:** A proposal for a swimming pool shall not require a special permit if it adheres to the following criteria:
 - a. **Placement:** Swimming pools must be designed so that any required excavation is no closer than 12” to ground-water.
 - b. **Setbacks:** Notwithstanding any other section of this zoning bylaw, a swimming pool or any portion thereof may be placed 15 feet from any boundary line, but no closer. For the purposes of this section, a surface level ‘patio’ surrounding an in-ground pool shall not count towards this requirement.
 - c. **Compliance with Other Regulations:** Construction and operation of swimming pools must be in accordance with all applicable health and building codes and regulations.
 - d. **Public Visibility:** A swimming pool shall not be clearly visible from a public street or sidewalk. Fencing and/or vegetation at least four feet in height, when placed between the public way and the swimming pool, shall satisfy this requirement.
 - e. **Side Lot Visibility:** Screening designed to visually screen activity at and around the pool from abutters shall be required for all swimming pools constructed on a lot of less than one-half acre. Visual screening may consist of native non-invasive species, fencing, or other natural or constructed materials or devices. Visual screening must be maintained for the life of the pool.
 - f. **Lighting:** Submerged in-pool lights, and downward-facing or shielded path lights, are permissible. No other outdoor lighting is permitted, except where required by health or building codes or regulations.
 - g. **Screening of Mechanical Equipment:** Pool-related mechanical equipment (including pumps, filters, heaters, etc.) is a detriment to public views, a common and constant source of noise in residential areas, and can detract from the quiet enjoyment of private homes. Therefore, swimming pool mechanical equipment must be placed within a structure designed to minimize the sound of the equipment
 - i. Enclosing equipment inside an underground “vault”, inside an insulated building, or in the basement of an adjacent building, which may incorporate vents to or from such structures as necessary, shall satisfy the requirements of this section.
 - ii. Enclosing the equipment within solid-panel fencing is acceptable, provided that sound levels from pool equipment are no greater than 40 decibels when measured at the closest point on the closest boundary line.

- iii. The Building Inspector may waive the requirement for an enclosure if she determines that pool equipment will not reasonably be seen or heard at the closest point on the closest lot line.
- h. **Fire Protection:**
 - In areas not served by hydrants connected to a pressurized municipal water supply, in-ground swimming pools can be used as a water source in case of fire emergency.
 - i. **Application:** This section shall apply to new construction or replacement of existing swimming pools.
 - ii. **Exemption:** This section shall not apply to pools proposed for a lot that is (a) served by the municipal water supply, or (b) less than 500 feet from a municipal water department hydrant, or (c) with a capacity of less than 5,000 gallons.
 - iii. **Requirements:**
 - 1. Swimming pools shall be connected to a non-pressurized draft hydrant ("Dry Hydrant"), constructed in accordance with all standards and specifications for pool access as delineated in FPA 1142: Standard on Water Supplies for Suburban and Rural Fire Fighting, as amended.
 - 2. The Dry Hydrant location shall be approved, with or without conditions, by the Fire Chief or his designee.
- i. **Drainage:** Where draw-down of pool water is required, disposal of excess water must be conducted in an environmentally-responsible manner. Pool operators are encouraged to dispose of excess water in a dry well at an appropriate rate and volume. Pool water may not be disposed of onto open ground where it may cause erosion, trespass, or damage to plant or animal life; nor onto any public way; nor into any municipal storm drain system; nor into any public or private sanitary sewage-treatment system. The Building Inspector or Board of Health Agent may require off-site disposal if they determine that pool water cannot be responsibly disposed of on-site. In all cases, pool water treatment must be discontinued for at least 72 hours prior to any draw-down of pool water.
- j. **Use and Safety:** Swimming pools must comply with the requirements of Section 153 of the Code of Edgartown, "Swimming Pools", as adopted on April 12, 1994 Annual Town Meeting, Art. 28, and as further amended.¹
- 5. **Special Permits:** If a proposal to construct a pool does not meet the criteria in *Section 4: Criteria for Swimming Pools*, the Special Permit Granting Authority may, after a public hearing held in accordance with Section 11 of Chapter 40A, issue a Special Permit to approve, to conditionally approve, or to deny the proposal.
- 6. **Criteria for Special Permits:** A Special Permit for a Swimming Pool may be granted if the Special Permit Granting Authority finds that, as presented or conditioned, the proposal
 - i. will not reasonably create a significant detriment to the health, safety, or enjoyment of abutting residents (General human activity, conversation, and noise common to the use of a pool during daytime hours shall not constitute a detriment);
 - ii. will protect the privacy and quiet enjoyment of abutting residents to the greatest extent reasonably possible;
 - iii. will mitigate sources of constant mechanical noise to the greatest extent reasonably possible; and
 - iv. is largely consistent with the goals of this section, and the general intent of the Edgartown Zoning Bylaw, to the greatest extent reasonably possible.

¹ The Code of the Town of Edgartown is available online through the town's website: <https://www.edgartown-ma.us>

or take any other action relative thereto.

Mr. Finn described the intention of the proposed change was

- to reducing the paperwork / permitting overhead associated with swimming pools
- to allow in certain cases swimming pools to be constructed on non-conforming lots without a special permit, and
- to improve safety relative to use of swimming pools by reasonably conditioning the construction of swimming pools

Mr. Finn also noted that the proposal will establish in-ground swimming pools as a non-habitable, minor accessory structure, which removes the requirement for a special permit in certain overlay districts.

Hot tubs would be exempt from the section of the zoning.

The Planning Board would always be the Special Permit Granting Authority for all swimming pools.

The language of the zoning bylaw proposal was reviewed.

Mr. Devon Pope asked about special permits issued for swimming pools. While no specific numbers were cited, it was noted that between the Planning Board and the Zoning Board, no less than fifty or sixty special permits for swimming pools had been issued over the past year.

Ms. Julie Rowell asked whether shrubbery for screening needed to be evergreen. Mr. Finn noted that the zoning bylaw was not specified as such.

Mr. James Hagerty noted that, on the Selectboard page on the Town Website, the public can review the reports from the Building Permits issued for structures over any given span of time, including the number of swimming pool permits issued.

No other comments were received.

Mr. Finn again summarized the specific proposals:

#1: Coastal District DCPC – Exemption – set aside

#2: Planning board as Special Permit Granting Authority, where more than one special permit by more than one board or committee is required

#3: Define / Consolidate the use of the terms “Flat Roof” and “Pitched Roof”

#4: Addition of a Tree Protection and Preservation Bylaw, intended to prevent clear-cutting of lots prior to or in line with development

#5: Addition of a Swimming Pool Bylaw, defining swimming pools as a minor accessory use and a non-habitable, minor accessory structure, and allowing for permitting by right in certain cases, even on non-conforming lots.

There was some discussion relative whether lots can currently be clear cut, and whether individual landowners can raise or lower the natural grade of their property.

Mr. Cisek asked about swimming pools in the Historic District, and how pools can or should be placed within the Historic District. Mr. Finn noted that the Historic District Bylaw and the Zoning Bylaw examine different aspects of any given development, and it is likely that a swimming pool proposed for the Historic District may require independent review by the two authorities.

Mr. Finn requested a vote to forward the proposed amendments to the Selectboard for inclusion on a warrant.

It was MOVED by Mascolo, SECONDED by McCourt

To close the public hearing, and to forward the proposed warrant articles to the Selectboard for inclusion on the next Annual Town Meeting warrant.

	VOTED:
MASCOLO: YES	MCCOURT: YES
CISEK (ALT): YES	MORRISON: YES
	4, 0, 0 (6:09 PM)

6:30 PM - PUBLIC HEARING - SP: MARTHA'S VINEYARD HOSPITAL, INC., 490 EDGARTOWN VINEYARD HAVEN ROAD (11B-243)(Continued from December 7, November 9, 2021)

Application to construct and operate a Senior Residential Facility, comprised of a seventy (70) bedroom skilled nursing facility, to be contained within five (5) "houses", each of which will have fourteen (14) bedrooms; also to construct a seventy-six (76) bedroom Workforce Housing complex, consisting of seven (7) structures; also to conduct site activities including clearing of land, grubbing, grading, filling, trenching, installation of utilities, construction of support structures, roads and parking areas, construction of paths, lighting, and landscape elements, and all other work necessary thereto.

Ms. Morrison noted that only four voting members were present at the meeting, leaving two members unable to continue to participate in review of the application. and in order to approve the application, the applicant would need a unanimous vote.

Mr. Ed Pesce asked for a continuance to the next possible date. There was some discussion relative to scheduling an additional meeting, and potential dates. It was determined that a continuance to any day prior to January 18 would be very difficult to schedule in light of board member absences and the holiday schedule.

It was MOVED by Mascolo, SECONDED by McCourt

To continue the public hearing to January 18, 2022 at 6:00 PM.

	VOTED:
MASCOLO: YES	MCCOURT: YES
MORRISON: YES	CISEK: YES
	VOTED: 4, 0, 0. (6:24 PM)

6:10 PM – DELIBERATION / DECISION - SP(Coastal District): , 42 Dunham Road (29B-71)

Application to conduct up to but no more than four for-profit, non-family events (typically weddings), supported by local wedding planners, tent companies, caterers, musicians, florists, and rental services.

Ms. Morrison noted that only four voting members were present at the meeting, and in order to approve the application, the applicant would need a unanimous vote.

The board agreed to postpone deliberation to January 18, 2022.

A request was made by Mr. Erik Hammarlund, it was MOVED by Morrison SECONDED by Mascolo

To reopen the public hearing in order to accept written comment ONLY; written comment will be accepted until 4 PM on January 18, 2022.

MASCOLO: YES
CISEK (ALT): YES

VOTED:
MCCOURT: YES
MORRISON: YES
4, 0, 0 (6:27 PM)

REVIEW OF MINUTES

October 5, October 19, November 9, November 16

The minutes from October 5, October 19, November 9 and November 16 were presented. After review, it was MOVED by McCourt, SECONDED by Mascolo

To approve the minutes as written.

MASCOLO: YES
CISEK (ALT): YES

VOTED:
MCCOURT: YES
MORRISON: YES
4, 0, 0 (6:30 PM)

MEMBER CONCERNS

Mr. McCourt noted that there is a “Climate Change Committee” being formed in Edgartown, and whether or not there was Planning Board involvement. After some discussion, Mr. Mascolo recommended getting more information in regard to the committee. Mr. Finn will follow up with Town Administrator James Hagerty.

Ms. Morrison noted that there were complaints in regard to additional and recurring noise at Stop & Shop, and that some neighbors have forwarded complaints to the Town. After brief discussion, Mr. Finn was asked to prepare a letter to Stop & Shop for review at the next regular meeting on January 4, 2022.

ADJOURN

It was MOVED by McCourt, SECONDED by Mascolo

To Adjourn.

APPROVED BY UNANIMOUS CONSENT.
(6:37 PM)

Respectfully Submitted,

Douglas Finn
Planning Board Assistant

MEETING PARTICIPANTS

Name (Original Name)

Fred Mascolo (iPhone)
James Cisek
Lucy Morrison
Mike McCourt
Fred Mascolo (Fred's iPad)
Alex Cervone (Town of Edgartown)
Doug Finn (Town of Edgartown)
Allan DeBettencourt (Town of Edgartown)
James Hagerty
Juliet Mulinare
Anthony Thayne
Cait Cantella
Cynthia Hubbard
David McDonough
Denise Schepici
Devin Fitzgerald Reston
Devon Pope
Ed Pesce
Edward Olivier
Erik Hammarlund
Geoghan Coogan
Julie Rowell (iPhoneJulie)
Kim Labonte
Kris Horiuchi
Lawrence Passmore
Marie Araujo
Marie Zadeh
Mark Alan Lovewell
Mark Nicotera
Polly Brown
Renee Lohman
Robert Ianelli
Ruth Neeman
Thomas Levi
Warren Vose
Zach Harris (Vineyard Gazette)