

July 1, 2021

**Via E-mail**

Edgartown Planning Board  
Michael McCourt, Chairman  
Fred Mascolo, Member  
Scott Morgan, Member  
Lucy Morrison, Member  
Glenn Searle, Member  
70 Main Street, 2nd Floor  
Edgartown, MA 02539

Re: 55 King Point Way Public Hearing

Dear Members of the Edgartown Planning Board:

On behalf of Richard Saltzman and Bette Saltzman (the “Saltzmans”), the beneficial owners of 65 King Point Way and abutters to 55 King Point Way, I am writing to the Edgartown Planning Board (“Planning Board”) to notify the Planning Board of a reciprocal deed restriction in the deeds of 55 and 65 King Point Way that has not been complied with, thus rendering the current plans before the Planning Board certain to change, and the public hearing on the plans currently before the Planning Board moot. I also raise the abutters’ objections to the plans currently scheduled to be reviewed by the Planning Board at a public hearing on July 6, 2021, in the event the public hearing goes forward with the current plans.

**A. 55 and 65 King Point Way Deed Restrictions**

Both 55 King Point Way and 65 King Point Way are subject to reciprocal deed restrictions which require the owner of each property to seek the approval of the other before commencing any new construction. Approval has not been sought by the owner of 55 King Point Way, 55 King Point Way Realty Trust, or the beneficial owners, Michael McNally and Martha McNally, despite the clear language in the deeds below. The Saltzmans have made numerous attempts to contact 55 King Point Way Realty Trust and the McNallys, including repeated, urgent attempts in recent weeks, but to date neither the Trust nor the McNallys have attempted to consult with the Saltzmans or sought their approval for the plans that the Planning Board has been asked to approve. In mid-June, after the application had been filed with the Planning Board, the McNallys finally sent an email informing the Saltzmans that the McNallys were planning to begin construction of a new home in the off season, but the email did not ask for the Saltzman’ approval and did not include the detailed plans that the deed restriction requires, only two conceptual schematics showing the proposed layout of the compound.

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With respect to 55 King Point Way, designated as “Lot 59” under the original subdivision plan, construction cannot be commenced prior to written approval by the owner of “Lot 58,” or 65 King Point Way, the Saltzmanns’ property. This restriction appears by reference in the September 30, 2020 deed from Michael and Susan Grenert to Richard S. Dubin, Trustee of the 55 King Point Way Realty Trust, recorded with the Dukes County Registry of Deeds at Book 81, Page 205, Certificate No. 14905.

More precisely, that deed states:

The premises are conveyed subject to and with the benefit of all easements, restrictions and rights of way of record, and subject to and with the benefit of the following:

1. The terms, provisions, restrictions and conditions as set forth in a deed dated October 5, 1995 and registered in the Dukes County Registry District Office of the Land Court as Document No. 36918 to the extent in force and applicable.

The October 5, 1995 deed recorded with the Dukes County Registry of Deeds, Certificate No. 36918 states:

It is the intent of the Grantor to ensure that the character of the landscape of the premises of which Lot No. 59 is a part be preserved and that the structures on each of Lots No. 58, 59, and 60 have minimal impact on the privacy and enjoyment of the other lots. Accordingly, the premises are conveyed together with the benefit of, and subject to, the following restrictions:

1. No structure or improvement of any kind or nature shall be commenced, erected or maintained upon Lot No. 58 or Lot No. 59, nor shall any exterior addition to or substantial alteration therein be made until plans and specifications showing the nature, kind, shape, height, design, materials, colors, and location of the same shall have been delivered in hand or by certified mail (return receipt requested) to, and approved in writing by, (i) in the case of Lot No. 59, either the Grantor or, in the alternative, the Grantor’s son, Justin A. Schneider, or their successors or assigns (“Grantor”) and (ii) in the case of Lot No. 58, the Grantee, his successors or assigns (“Grantee”). Structures shall be of a style that blends with the landscape, using natural wood trim and siding. It is agreed that approval of such plans and specifications shall not be unreasonably withheld.

In the event that the party to whom plans and specifications have been submitted shall fail to approve or disapprove plans or specifications within sixty (60) business days after receipt of said plans or specifications, they shall be deemed to have been approved. The approving party, on request,

shall furnish a certificate of approval in recordable form to the party whose plans have been approved and who has built in conformity with such plans.

2. Improvements shall be located in such a manner as not to unreasonably interfere with views of the Edgartown Great Pond, and, in the case of Lot No. 58, construction of structures shall be confined to the building envelope shown on the Plan.

Notwithstanding the clear, straightforward requirements of the deed restriction that is binding on 55 King Point Way, neither 55 King Point Way Realty Trust nor the beneficial owners have provided the Saltzmans with the design plans and specifications showing the nature, kind, shape, height, design, materials, colors, and location and requested the Saltzmans' approval.

If asked for their approval of the current plans between now and the public hearing on July 6, the Saltzmans would not approve the plans for 55 King Point Way for the reasons described below. And the Saltzmans will enforce the deed restriction that requires the McNallys to seek the Saltzmans' approval. I raise this issue to the Planning Board to explain why the current plans before the Planning Board are almost certain to change.

#### **B. Abutter Objections to the Current Plans**

55 King Point Way Realty Trust is seeking (1) a special permit to construct a swimming pool and a spa within the Inland Zone of the Coastal District and within Zone 2 of the Edgartown Ponds District and (2) a special permit to construct a tennis court within Zone 2 of the Edgartown Ponds Area District and within the Inland Zone of the Coastal District and a fitness studio, which is a non-minor accessory structure, within Zone 2 of the Edgartown Ponds Area District and within the inland zone of the Coastal District. 55 King Point Way is surrounded by 65 King Point Way and conservation land owned by Sheriff's Meadow Foundation.

The Saltzmans, as abutters to 55 King Point Way, raise a number of objections to the plans currently scheduled to be heard by the Planning Board on July 6, 2021. Their objections are as follows:

##### *1) Noise*

The current plans include construction of a tennis court, a swimming pool, and numerous outdoor entertaining spots. The proposed addition of a tennis court would greatly increase noise levels – and the character of sound – in what is normally a very peaceful and quiet location. Due to the specific location of 55 King Point Way, the noise carries greatly over the water. A tennis court could be immensely disruptive to the Saltzmans and those across the cove.

In addition, the swimming pool is planned extremely close and situated in a way that is open to the Saltzmans' property, likely resulting in an unnecessary increase in noise. A firepit is planned to be installed next to the swimming pool, on a large patio. The Saltzmans would prefer the pool be situated

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further away from 65 King Point Way with the main dwelling or other structure between the pool and 65 King Point Way, acting as a sound buffer. Likewise, the firepit and outdoor entertaining spots, also open to 65 King Point Way, are likely to encourage late-night entertaining, which would no doubt be accompanied by an increase in noise. The Saltzmans would prefer a further location and buffer to mitigate potential noise.

*2) Light and Numerous “Fire Elements”*

The plans currently before the Planning Board do not detail the lighting for the proposed plans. The plans do show, however, three outdoor “fire elements” – a firepit, a “fire table,” and a fireplace. The Saltzmans are concerned that the possible lighting of the tennis court, swimming pool, and other lighting around the landscape, including the fire elements, could disrupt not only the neighbors, but also the wildlife in the area.

*3) Historic Home*

The current dwelling on 55 King Point Way contains parts of an over 100-year-old home. (Indeed, the Saltzmans have been told that parts of the home date as far back as the 18<sup>th</sup> Century.) The current plans apparently include the demolition of the existing home, thus the demolition may require referral to the Martha’s Vineyard Commission.

*4) Scenic Vistas*

One of the identified purposes of the Edgartown Ponds Area Overlay District is to protect scenic vistas. The Saltzmans are concerned about the view from the Edgartown Pond, because only short brush vegetation and a lawn are between the Pond and the planned compound.

**C. Conclusion**

It is unfortunate I must bring the deed restriction issue – which I acknowledge should be a private issue – before the Planning Board, but the 55 King Point Way owner and beneficial owners’ failure to consult with the Saltzmans has left them no choice. If the public hearing on July 6<sup>th</sup> goes forward as currently scheduled, I will be present on behalf of the Saltzmans to raise the objections to the current plans. Thank you for your consideration of this matter.

Sincerely,



C. Dylan Sanders

**Sugarman, Rogers, Barshak & Cohen, P.C.**

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cc: Mr. Michael McNally and Ms. Martha McNally  
Mr. Richard Dubin, Esq.  
Mr. Doug Hoehn, Schofield, Barbini & Hoehn, Inc.  
Mr. Mark Hutker, Hutker Architects  
Mr. Philip Regan, Hutker Architects  
Ms. Jane Varkonda, Edgartown Conservation Commission Agent

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