

Public Hearing January 31, 2008

ISLAND ROAD DCPC

1. Island-Wide Guideline Amendments

2. Conformance of Proposed Amended Edgartown Regulations

Staff notes (Taylor)

Note: other helpful documents, including guidance, flow chart, etc. grouped on web calendar date <http://www.mvcommission.org/calendar.html>

The Island Road District was designated in 1975, as one of three Island-wide Districts that the early MVC created from many nominations received when the Commission first opened its doors. The early Commission apparently felt strongly that these three should be Island-wide (the Coastal District, Island Road District and Special Places District) and there were designations in the Major Roads Zone in all 6 towns. For the Special Ways Zone, there were designations in West Tisbury, Chilmark and Aquinnah. The Commission has since made a number of amendments, including adding Special Ways for Oak Bluffs and Edgartown. Regulations are in place, and have been for at least some Special Ways since 1976. The regulations follow closely from the Goals and Guidelines. Excerpts from the December 22, 1975 Decision of the Martha's Vineyard Commission Designating the Island Road District as a District of Critical Planning Concern follow:

Cultural or Historic District: Special Ways

Special Ways, roads which have been virtually abandoned or left to infrequent use, are historical by definition. Also, by definition, however, they have not been part of the Island life and commerce for some time. They are a unique resource because they provide public rights of way, but are not committed to major vehicular travel. They do tend to link origins and destinations that people will frequent; therefore they offer a resource which can be developed as a means to experience the Island landscape by slower means of transportation, such as walking, horseback riding, or possibly bicycling. This is clearly a case where proper development guidelines at this time could preserve the historic aspects of old rights-of-way while enhancing them for use by Island residents and visitors. Development near the Special Way is not so injurious as it might be along major vehicular transportation corridors, because it could be pleasant to walk or horseback ride through populated, as well as unpopulated areas. However, new vehicular roads in the area should be on new rights-of-way, thus preserving the Special Ways for alternative forms of transportation.

1. PROCEDURAL NOTES

Purpose of hearing:

To hear testimony and receive evidence as to whether the Commission should:

1. Amend the Island-wide guidelines for the development of the District specified in the Commission's designation of the District (Section 5 of the "Decision of the Martha's Vineyard Commission Designating the Island Road District as a District of Critical Planning Concern"); and
2. Determine whether proposed amendments to the regulations governing the Island Road District in the Town of Edgartown conform to the guidelines for the development of the District specified in the Commission's designation of the District.

Timeline and Context: MVC accepted the Planning Board's nomination to include several new Special Ways on August 9, voted designation on October 4. From the time of the original nomination, the Planning Board expressed concern that the existing regulations may not be the best way to regulate these newly proposed areas

where there are ways that are already routinely traveled by automobiles but nevertheless in need of protection. During the course of that designation, there was discussion regarding the possible need to consider amendment to the regulations, and even to the development guidelines for the district, in order to accommodate including some already-traveled ways. On December 27, the Edgartown Planning Board asked the Commission to consider amendments to the regulations for the Edgartown Special Ways zone of the Island Road District. Should the Commission determine conformance of the proposed regulations with the guidelines of the Island Road District (as they may be amended as part of this hearing), the Town Meeting will then vote on the regulations (2/3 vote required) and the boundary amendment previously voted by the Commission. After both of those things have happened, the new regulations will be in effect for all the Special Ways in Edgartown (designated in 2005 and designated in 2007), and the moratorium will end.

2. PROPOSED AMENDMENTS TO ISLAND ROAD DISTRICT (underlined; pink corrected on January 31):

- Section 5 V.A.1 No way or road shall be constructed within the Special Ways Zone which exceeds a width of twelve (12) feet unless the town elects to allow greater width by Special Permit after approval by the Martha's Vineyard Commission as a Development of Regional Impact.
- Section 5 V.A.2 No fences, walls, or structures shall be erected, placed or constructed within twenty (20) feet of the centerline of the Special Way, unless the town elects to permit fencing or walls on small lots, in which case the town shall determine what acreage constitutes a small lot and the town is encouraged to define setbacks commensurate with the height, transparency and materials of the fence or wall.
- Section 5 V.B.1 Permitted Uses: Any use permitted by the applicable town zoning district, provided that the development does not result in direct vehicular access to the Special Way. However, maintenance and continued vehicular use may be permitted where specifically identified by the town as routinely travelled by motor vehicles prior to nomination.

Discussion: The proposed amendments to the Island Road District would allow the towns more flexibility in proposing ways for the Special Ways designation. The original Island Road District, as designated in 1975, was intended to protect untraveled ways from being developed in a manner that would interfere with their cultural value. In the intervening years, many of those ways remained unprotected and are now "tainted" with bits of development. So, by making the flexibility to afford protection to those ways, the Commission could still honor the original intent of protecting those ways, just in a different way than if they had been protected earlier. Special Ways protection could be afforded to a wider range of ways in need of protection, even if parts of those ways have already been developed for automobile access. The goal remains the same "To protect historic places, to retain these ways open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route except for access to properties where no alternative access exists".

3. PROPOSED AMENDMENTS TO REGULATIONS FOR EDGARTOWN SPECIAL WAYS (attached as Appendix 2):

The Edgartown Planning Board has proposed amendments to the Special Ways By-Law which would accommodate ways that are already developed in part:

- Regarding use by motor vehicles:
 - The purpose would be slightly amended to accommodate traveled ways (Sec....2.a.)

- The Town would be able to identify and map Special Vehicular Ways where vehicular rights-of-way predate the designation and would be permitted (Sec...2.b.)
- Clarification is proposed that the existing surfaces of Special Vehicular Ways could be maintained and repaired with the existing surface materials. (Sec....2.d.4)
- Refinements are proposed for part f. *uses requiring a special permit* to help the Planning Board review Special Permit applications for vehicular access. (Sec...2.f.1.)
- The Planning Board could only issue a Special Permit for a width greater than 12 feet after approval by the Martha's Vineyard Commission as a Development of Regional Impact (Sec....2.g.)
- Regarding use of the 20' buffer along either side of the centerline of the way
 - Would acknowledge and identify existing fences and areas of removed natural vegetation, grandfathering such. (Sec...d.4)
 - For parcels of one acre or less, would create exceptions to removal of vegetation and erection of fences, the latter based on the height and transparency of the fence. (Sec...2.d.6)
- Generally
 - Excavation and filling would be added to prohibited activities in the Special Way Zone. (Sec...2.d.5)
 - Would explicitly state that new road or utility rights-of-way permitted or created by the Town in the Special Way shall restore the physical integrity of the Way. (Sec...2.f.5)

Discussion: The proposed amendments are needed in order to accommodate a more flexible view of what makes a way special. For example, the regulations were silent on the 12-foot width limit that is a cornerstone of the Island Road District. When the Special Ways Zone in Edgartown included only Dr. Fisher Road, there was no need to address the 12-foot restriction. By including the five newly designated ways, the expanded Special Ways Zone must address the 12-foot restriction. The Planning Board proposes addressing this by only issuing a Special Permit for a greater width after approval by the Martha's Vineyard Commission as a Development of Regional Impact.

Should the Commission choose to amend the Island Road District guidelines as noted previously, there should be no problem with finding conformance of the proposed amended regulations.

No correspondence has been received as of January 25.

Appendices include:

- original goals and guidelines for the Island Road District
- proposed amended regulations for Special Ways in Edgartown.

APPENDIX 1 – GOALS AND GUIDELINES FOR THE DISTRICT (original)

(excerpted from the 1975 designation Decision)

Goals B: Special Ways Zone: To protect historic places, to retain these ways open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route except for access to properties where no alternative access exists.

Special Guidelines For The Special Ways Zone

A. Development Guidelines

1. No way or road shall be constructed within the Special Ways Zone which exceeds a width of twelve (12) feet.
2. No fences, walls, or structures shall be erected, placed, or constructed within twenty (20) feet of the centerline of the Special Way.
3. No special way shall be paved with any impervious material.

B. Uses Within the Special Ways Zone

I. Permitted Uses

Any use permitted by the applicable town zoning district, provided that the development does not result in direct vehicular access to the Special Way.

2. Uses Allowed by Special Permit

Any use permitted by the applicable town zoning district, which results in direct vehicular access to the Special Way.

3. Uses Not Permitted

Any development within forty (40) feet of a special place of historic value, as listed on the Special Places Register of the Commission.

Guidelines Applicable in Both Zones (Major Road Zone and Special Ways Zone)

A. No stone wall shall be moved, removed, or otherwise altered, except for repair, except by a Special Permit

B. Any additional vehicular access to the public road must be at least 1000 feet, measured on the same side of the road from any other vehicular access, unless this rule prevents at least one access to a contiguous piece of land now in separate ownership. In the latter case, that contiguous land will be allowed a single access. No land shall in the future be divided (or sold) so as to require more points of access than permitted above.....

APPENDIX 2 – PROPOSED AMENDED REGULATIONS FOR EDGARTOWN SPECIAL WAYS

Proposed Amended Special Ways By-Law in Edgartown 1/23/08

14.2 Island Road District

1. Major Roads [Unchanged]

2. Special Ways

a. Purpose

The Special Way designation protects old cart paths and walkways that are cultural and historic links to the community's past, recreational resources for enjoyment of the outdoors, and a conservation resource to accommodate and promote non-motorized means of transportation. While some segments of a Special Way may be routinely used by automobiles, they nevertheless provide continuity to the entire Special Way and the community maintains an interest in how these segments are further utilized.

b. Designated Special Ways

Special Ways are typically evidenced by cart path depressions in the terrain measuring from a few inches to more than a foot. The Special Way is measured from the tops of the embankments on either side of the way. Absent such physical evidence or other documentation, its width shall be assumed to be eight (8) feet.

Segments of Special Ways that are routinely traveled by automobiles may not have any physical characteristics to distinguish them from contemporary dirt roads. Such segments and their widths are noted as Special Vehicular Ways on a map entitled "Map of Special Ways, January 1, 2008." (Hereinafter "Map").

The designated Special Ways are (map and lot numbers refer to Edgartown Assessors maps dated January 1, 2007 unless otherwise noted):

- 1) Dr. Fisher Road (a.k.a. Willay's Plain Path) - beginning at the Edgartown-West Tisbury Road at the western edge of Map 22 Lot 2.1 and running northwest to the Manuel Correllus State Forest at the northern edge of Map 22 Lot 54 (Edgartown Assessors maps dated January 1, 1999).
- 2) Ben Tom's Road – beginning at the north side of Edgartown-West Tisbury Road between Map 28 Lot 6 and Map 21 Lot 96 northwesterly and northerly following the west fork to Pennywise Path along the southern border of Map 21 Lot 169.
- 3) Middle Line Path – beginning at Ben Tom's Road at the easternmost point of Map 21 Lot 133.1 and running northwesterly to its merging with Pennywise Path at the westernmost point of Map 22 Lot 125.20.
- 4) Pennywise Path – beginning at Tar Kiln Road and Three Cornered Rock Road easterly, across Whaler's Watch Way, to the northwestern point of Map 21 Lot 148.1, continuing easterly then northeasterly and ending at Edgartown-Vineyard Haven Road at the northeast corner of Map 21 Lot 36.33.
- 5) Tar Kiln Path – beginning at the Manuel Correllus State Forest between Map 10 Lot 96 and Map 11 Lot 1.143 running east to its intersection with Three Cornered Rock Road in the interior of Map 11 Lot 86.1.
- 6) Watcha Path – beginning at the northeast point of Map 25 Lot 4, west of the intersection of Edgartown-West Tisbury Road and Oyster-Watcha Road, extending westerly some 360 feet along a segment formerly known as Mill Path, then southwesterly to the northeast point of Map 40 Lot 4.2, continuing southwesterly to the West Tisbury town line at the southern boundary of Map 40 Lot 6.

- c. Establishment of the Special Way Zone
The area lying within twenty (20) feet of the centerline of a designated Special Way shall comprise the Special Way Zone and be subject to the regulations herein.
- d. Development Regulations
- 1) Development and use within a Special Way Zone shall not block or prevent non-motorized means of travel such as walking, horseback riding and bicycling along a Special Way.
 - 2) There shall be no alteration of the width or surface of a Special Way. This provision is not intended to prevent the routine maintenance and repair of existing segments of Special Ways consistent with these Special Way regulations.
 - 3) No Special Way shall be paved with impervious materials.
 - 4) Except as allowed as part of a Special Permit issued under 14.2.2.f, there shall be no removal of existing vegetation within a Special Way Zone other than to keep the Special Way clear of debris and overgrown vegetation, except where:
 - a. natural vegetation has been removed prior to December 1, 2007,
 - b. the width of a Special Way Zone extends beyond a pre-existing fence shown on the Map, or
 - c. the width of a Special Way Zone extends beyond a fence allowed herein.
 - 5) No fences, walls, structures, excavations, fill or obstructions shall be erected, placed or constructed within the Special Way zone.
 - 6) Notwithstanding 2.d.4 and 2.d.5 above, areas where the Special Way Zone encompasses a portion of property that is one (1) acre or less in area may have fences erected on it within the Special Way Zone based upon the height and transparency of the intended fence.

<u>Fence height</u>	<u>Fence Type</u>	<u>Minimum Set Back from Center Line</u>	
		<u>Special Way</u>	<u>Special Vehicular Way</u>
< = 5'	All	5' *	One foot outside traveled width
+5'	All but stockade	10'	10'

*or one (1) foot back from the physical edge of the top of the embankment alongside the Special Way, whichever is greater.

A stockade fence shall mean any fence that prevents 90% or more visible light to pass through it.

- 7) The Special Ways are for non-motorized transportation and recreation only, except for those segments identified on the Map as Special Vehicular Ways and where vehicular rights-of-way pre-exist the designation of the Special Way.
- e. Permitted uses in the Special Way Zone
Any residential, recreational, agricultural or open space use permitted in the underlying zoning districts in which the Special Way Zone lies is permitted, subject to the regulations herein and provided that the use does not involve motor vehicle use of the Special Way segments, except for those segments identified on the Map as Special Vehicular Ways and where vehicular rights-of-way pre-exist the designation of the Special Way.
- f. Uses Requiring a Special Permit in the Special Way Zone
- 1) Any uses permitted in the underlying zoning districts in which the Special Way Zone lies which involve motor vehicle use of the Special Way or additional vehicular access (i.e. entrances or

curb cuts) to the Special Way. Where property has a right to vehicular access via a Special Way, the Planning Board shall seek to evaluate and determine if:

- a. alternate access is or might be available that could avoid vehicular use of the Special Way;
- b. an existing access already serves the property; and
- c. the location and width of the proposed access, its distance from other existing accesses, and the vegetation in the immediate surroundings are consistent with the purpose of this bylaw.

2) Uses allowed by Special Permit in the underlying zoning districts in which the Special Way Zone lies.

3) Crossing of a Special Way by a proposed dirt, paved, or otherwise improved roadway or by a utility or transmission line. Consideration of such crossings shall include deliberation of appropriate means to draw attention to the crossing for people's safety, including the surface composition of the crossing.

4) Development, uses, or structures for which the imposition of these regulations would otherwise deprive a landowner of all economically viable use and value of the parcel of land owned or controlled by the applicant, considered as a whole.

5) Where new roadways or other vehicular or utility right-of-ways, which encompass segments of any Special Way, are permitted or created by the Town of Edgartown, provisions shall be made to ensure that the integrity of the Special Way remains, consistent with the purpose of this bylaw.

g. Criteria for Special Permits

In considering a request for a Special Permit, the Planning Board shall consider whether the request is consistent with the purpose of the Special Way designation (14.2.2.a), whether the request is consistent with the intent of this bylaw, and whether the request will create conflicts with present or future uses of the Special Way. The Planning Board may grant a Special Permit for the use or alteration of a Special Way authorizing the way to be used or expanded to a width greater than twelve (12) feet only after the matter has been referred to the Martha's Vineyard Commission for review as a Development of Regional Impact and only after the Commission has approved the application.

h. Relocation of a Special Way

Relocation of a portion of a Special Way may be approved by the Planning Board upon holding a public hearing and finding that the relocation would: preserve the continuity of the way, create new trail connections, provide increased public trail access, improve safety, or otherwise enhance the way for trail users. However, it is beyond the jurisdiction of the Planning Board by such action to either grant or extinguish public or private rights-of-way that may exist in the Special Way.