



2021 00007550

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# Town of Edgartown Planning Board

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Edgartown, Mass  
Town Clerk's Office

April 14 2021  
Rec'd for Record  
ATJ: 46 PM

## DECISION

Barry Lundgren, 22 Leland's Path

On Tuesday, March 30, 2021 at 6:15 PM, the Edgartown Planning Board held a public hearing in the Town Hall, Main Street, on the request of Doug Hoehn, SBH, Inc., on behalf of Barry Lundgren, Owner, for a special permit, to construct a pool on a conforming lot in the inland zone of the Coastal District.

The property is located at 22 Leland's Path, Assr. Pl. 35-33.3.

### Applicable Law

The application was made in accordance with Sections 5.1 and 8.4 of the Edgartown Zoning Bylaw.

### Applicant Provided

- APPLICATION - Received on February 22, 2021.
- SITE PLAN - in Edgartown Mass., prepared for Barry Lundgren, Scale 1" = 40'; dated February 17, 2021
- EXHIBIT - Plan Set - prepared by RW Design - dated 2/1/2021 - Scale Varies - pages A.01, A1.1, A2.1
- EXHIBIT - Perspectives - prepared by RW Design - Dated 02/18/2021 - Sheets "Perspective 1", "Perspective 2", "Perspective 3", "Perspective 4", "Perspective 5", "Perspective 6", "Perspective 7"
- EXHIBIT - Assessors Locus Map, dated February 18, 2021

### Procedural Record

The application and plans were submitted to the Planning Board on February 22, 2021. A public hearing notice was advertised in the Vineyard Gazette on two consecutive Fridays, Fri, Mar 12, 2021 and Fri, Mar 19, 2021. Hearing notices were posted by the Town Clerk, placed on the Town's website, placed on the Planning Board bulletin board, and distributed to appropriate town departments Public Notice to Town Clerk. Abutters, certified by the Assessors' Office, were notified by mail no later than Tue, Mar 16, 2021.

The public hearing was held on March 30, 2021, at 6:15 PM, and was closed on March 30, 2021 at 6:31 PM.

### Criteria

- Section 17.7.A. A Special Permit shall only be issued following public hearing held in accordance with M.G.L., Chapter 40A.
- Section 17.7.B. B. All Special Permits shall be limited to twelve months validity period. If the activity authorized by the Special Permit has not taken place within the twelve month, any extension of said special permit shall require a reapplication.
- Section 17.7.C. For applications for Special Permits within the Coastal, Island Road, Special Places, Edgartown Ponds and Cape Pogue Districts, the Planning Board shall give proper notice and hold a hearing pursuant to M.G.L., Chapter 40A, Section 11. It shall also request and consider written reports from the following Town boards concerning the following issues. Said reports shall advise the Planning Board on potential impacts of the proposed uses and structures and on the possible improvements or conditions on the applications.
  - Board of Health - water quality and pollution of potable water supply.
  - Conservation Commission - littoral ecology, pollution of wetlands and ponds, and erosion.
  - Board of Selectmen, Marine Biologist and Shellfish Committeemarine fisheries and shellfishing.
  - Building Inspector – compatibility of proposal with the character of the area and the intent of the Zoning Bylaws.
- Section 17.5.C.2: The Planning Board may impose such condition, safeguards and limitations, both of time and use, as it may deem reasonably appropriate to protect the neighborhood or otherwise serve the purpose of the bylaw.

### COASTAL DISTRICT

1. 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 and 18 feet for a 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.

**DECISION - Barry Lundgren, 22 Leland's Path**

2. Except by Special Permit, no road shall exceed ten (10) feet in width.
3. Except by Special Permit, all utility installations shall be placed underground.
4. Any ground water well shall require a permit from the Board of Health before installation, and shall be located at least two hundred (200) feet from any salt water body.
5. Any sanitary disposal facility shall be located a minimum of two hundred (200) feet from any salt water body.
6. There shall be a minimum separation of two hundred (200) feet between sanitary disposal facilities.
7. No portion of a sanitary disposal facility shall be located less than five (5) feet above minimum ground water elevation.
8. No sanitary disposal facility shall be located less than six hundred (600) feet from a public water supply well nor less than two hundred (200) feet from any domestic water supply well.
9. Where compliance with these regulations is not possible due to the dimensions of a lot existing in separate ownership from adjoining lots before December 22, 1976, the requirements (4-8) may be modified by the Board of Health.
10. Notwithstanding subsection 5.1.E.9., the Board of Health's approval of an upgrade from an existing septic system or cesspool to a Title 5 septic system or other enhanced system, that entails the modifications of one or more of the setback or separation requirements set forth in subparagraphs 4-8, shall be lawful, whether or not the lot on which the upgraded system is located was in separate ownership from adjoining lots before December 22, 1976 provided that, in the opinion of the Board of Health, the revised design provides:
  - a. for no increase in flow;
  - b. for no increase in the number of bedrooms;
  - c. there is a greater protection of public health, safety and the environment than the existing cesspool; and
  - d. the provisions of subsection 5.1.E.10. shall only apply to existing lots created before February 15, 2011.
11. This subsection shall apply to approvals issued prior to the date of this Amendment, as well as to those issued thereafter.

**Findings**

- The proposal is for a swimming pool, and a pool cabana.
- The pool cabana qualifies as a guest house, as it has facilities for sleeping, bathing and preparation of food.
- The proposed location of the pool is relatively flat, and would require a minimal alteration of grade, and would be placed behind an existing retaining wall.
- The guest house is about 670 square feet +/-.
- A basement space is proposed for the pool house.
- The pool equipment is proposed to be in a fenced area, open to the air.
- The pool equipment would be about 200 feet to the property line, about 330 feet to the nearest dwelling, and about 430 feet to the edge of the harbor.
- The fence enclosure will be treated with sound-proofing blankets or similar, in order to mitigate sound impacts.
- The pool will be salt-treatment, and heated with propane.
- The setbacks to the nearest neighbor and the water are satisfactory.
- No public comment (in person, or in writing) was received.

**Action**

It was MOVED by Searle, SECONDED by Mascolo,

*To approve the swimming pool as presented, with standard conditions for swimming pools.*

**VOTED: 5, 0, 0. (6:32 PM)**

**Conditions**

- This special permit is not in effect until the applicant has filed a certified copy of the decision or certificate with the registry of deeds. A copy of same shall be provided to the Planning Board and Building Inspector.
- The construction shall conform to the application considered and approved by the Planning Board, including all plans and documents submitted in support of same, and approved by the Planning Board.
- This special permit shall run with the land.
- Outdoor lighting shall be limited to that required by the building code and shall be down-lit only and fully shielded when viewed from the top and sides. Mercury vapor lighting and "bug zappers" are prohibited.
- Prior to issuance of a building permit, the above specified plans will be compared to the construction documents submitted to the Building Inspector for verification and correspondence. If the Building Inspector determines that there are significant differences, the applicant shall be required to apply for a Modification to this Special Permit.
- Substantial construction activity must commence no later than one year from the date of final action by the Planning Board.
- No construction activity will take place earlier than 7:30 AM or later than 7:30 PM, or on Sunday, or from June 15 through September 15.

**STANDARD CONDITIONS FOR SWIMMING POOLS**

DECISION - Barry Lundgren, 22 Leland's Path

USE and SAFETY

- 1. Only the residents of the dwelling and their guests shall use the pool.
- 2. The pool shall be surrounded by a barrier, securing access to the pool in accordance with local and state Building and Health codes.
- 3. A ring buoy shall be provided with a secured safety line of a length adequate to reach all areas of the pool.
- 4. All pool equipment shall be located inside a pool house or enclosed structure for noise abatement to unless specifically waived by the SPGA.

WATER

- 5. Pools supplied by well water shall be filled prior to June 15 or after September 15.
- 6. Pool water shall be treated with a non-chlorinated treatment system only. Pools shall not be drained within 48 hours of any chemical treatment.
- 7. Draining or adjustment of water level shall be in accordance with Department of Health or Conservation Commission regulations, and shall not be accomplished through disposal of water into a public or private way, and shall not be allowed to cause surface ponding or flooding.

LIGHTING and ENERGY

- 8. Outdoor lighting is limited to that required by building code, and shall be fully shielded, and directed downward. Mercury vapor lighting and bug zappers are prohibited.
- 9. Heated pools are permitted with the recommendation the heat source is solar, geothermal or other alternative energy source.

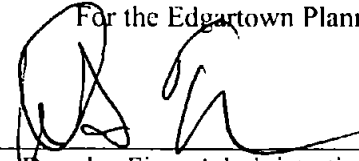
COMPLIANCE

- 10. The project shall comply with any applicable Conservation Commission Order of Conditions, Massachusetts Department of Environmental Protection Wetlands Order of Conditions, Board of Health regulations, and Building Code.
- 11. The responses contained within the Swimming Pool Special Permit Criteria Checklist shall become a part of this decision.
- 12. Copies of this decision shall be provided to the construction crew prior to the construction of the project.

###

*These proceedings were conducted in accordance with the provisions of the General Laws, and the Edgartown Zoning Bylaw. A full copy of the application, plans and proceedings is on file for inspection. Persons aggrieved by this decision may appeal in accordance with the provisions of MGL Ch. 40A §17 by filing notice of such appeal with the Edgartown Town Clerk within 20 days<sup>1</sup> of the filing of this decision with the Town Clerk.*

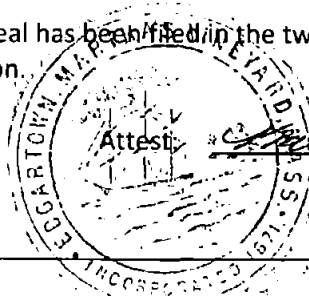
For the Edgartown Planning Board



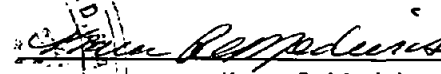
Douglas Finn, Administrative Assistant

Date: September 21, 2021

I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.



Attest:



Karen R. Medeiros, Town Clerk  
Kimberly Speight, Assistant Town Clerk

<sup>1</sup> From Chapter 53 of the Acts of 2020, Sec. 17: "ii. a requirement of a statute, ordinance, bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020; provided, however, that the applicable period shall resume 45 days after the termination of the state of emergency, or by a date otherwise prescribed by law, whichever is later;" Accordingly, timeframes for appeal are suspended and extended pursuant to this chapter. Applicant and/or Appellant are strongly advised to seek legal counsel in regard to any appeal.



2021 00005928

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**THE COMMONWEALTH OF MASSACHUSETTS**

**TOWN OF WEST TISBURY**  
**ZONING BOARD OF APPEALS**

**DECISION OF THE BOARD OF APPEALS ON THE PETITION OF Sanke Realty Trust, filed with the West Tisbury Town Clerk on June 21, 2021 ZBA Case File 2021-19**

- Applicant:** Kathryn R. Ham – Trustee of Sanke Realty Trust, PO Box 2540, Edgartown, MA 02539
- Property Owner:** Kathryn R. Ham – Trustee of Sanke Realty Trust, whose title to the property is recorded at the Dukes County Registry of Deeds and described in Book 1517 Page 115, dated January 8, 2020.
- Agent:** Vineyard Land Surveying & Engineering, Inc.
- Locus:** 160 Plum Bush Point Rd., West Tisbury, MA, Assessors Map 35 Lot 6.15, RU district, 6.4 acres.
- Plans:** 1) Site Plan prepared by Vineyard Land Surveying and Engineering, Inc. dated April 26, 2021.  
2) Floor plan and elevations prepared by Hutker Architects dated April 26, 2021.  
All plans on file at the Zoning Board of Appeals office.
- Notice:** Certified abutters notified on May 12, 2021 and legal notice advertised in the Martha's Vineyard Times on May 13 and May 20, 2021.
- Hearing & Request:** A Public Hearing was held on May 27, 2021 and continued to June 10, 2021 on an Application for a Special Permit from Sanke Realty Trust to construct a 20'x40' swimming pool and an 847 sf. garage in the Inland Zone of the Coastal District at 160 Plum Bush Point Rd., Assessor's Map 35, Lot 6.15 RU District.
- Requirement:** Sections 8.5-4C and 6.1-5B of the West Tisbury Zoning Bylaws.
- Present:** Larry Schubert, Julius Lowe, Deborah Wells, John Rau and Jeffrey Kaye.
- Absent:** N/A
- Decision:** On June 10, 2021 the West Tisbury Zoning Board of Appeals voted to **GRANT** a Special Permit with **CONDITIONS** to Sanke Realty Trust to construct a 20'x40' swimming pool and an 847 sf. garage in the Inland Zone of the Coastal District at 160 Plum Bush Point Rd., Assessor's Map 35, Lot 6.15 RU District under Sections 8.5-4C and 6.1-5B of the West Tisbury Zoning Bylaws.
- Vote to Approve:** Julius Lowe, Deborah Wells, John Rau, and Jeffrey Kaye.
- Abstained:** Larry Schubert
- Findings:** 1) There was no abutter correspondence.  
2) The garage and pool comply with all setback requirements.  
3) The project has undergone site plan review by the Planning Board.  
4) The proposed construction does not fall within the purview of the Conservation Commission.  
5) The project was reviewed and found to be compliant with bylaw section 9.2-2 Review Criteria.
- Conditions:** 1) The applicant and installers must ensure that the barrier fencing is acceptable to the West Tisbury Building Inspector and meets the requirements of the Building Code. The applicants and installers must comply with all other safety requirements and further permitting as required by the West Tisbury Zoning and Building Inspector and Board of Health. The applicant and installers must comply with all requirements as stated in Massachusetts State Building Code (CMR) 780 which regulates the requirements for swimming pools.

- 2) The fencing should be of the height and description as in approved plans and sited as in approved plans. Any changes to the fencing must be approved by the Zoning Board of Appeals.
- 3) Lighting for the pool must conform to Section 8.6 of the West Tisbury Zoning Bylaws, the lighting regulations.
- 4) The initial filling of the pool must be from a mixture of well water and an off-site source of water brought in by tanker. At any time that the pool is substantially or completely drained, the water must be pumped into a tanker and disposed of off-site in a responsible manner and site. The refilling of the pool must be from a mixture of off-site source of water brought in by tanker and well water. This condition must be posted in a visible place for the pool service employees to see. The applicant must ensure that the service company is aware of this condition.
- 5) The applicant and the pool service company must do any minimum maintenance draining of the pool in such a manner as to direct all drainage away from any wells on the property or neighboring property, and away from any wetlands. Drainage must not flow onto neighboring property. Drainage may not occur until such time that there is no longer any chlorine or other salt content in the water. This condition must be posted in a visible place for the pool service employees to see. The applicant must ensure that the service company is aware of this condition.
- 6) Temporary or permanent fencing as required by the West Tisbury Building Inspector must be in place before the pool may be filled with water, and the pool installation must be compliant with all State and Local regulations.
- 7) Any changes to the pool application must be approved by the ZBA

**NOTE WELL:** It is understood that the applicant will obtain all other permits or authorizations required by the Town of West Tisbury before proceeding with any work.

***NO VARIANCE OR SPECIAL PERMIT SHALL TAKE EFFECT UNTIL:***

- 1. A period of twenty days has elapsed from the date of the filing of the Board's written Decision with the Town Clerk, and the applicant has received a copy of the Decision bearing the certification of the Town Clerk that a period of twenty days has elapsed from the filing of the Decision and that no appeal has been filed, or the appeal has been denied or dismissed. The Certified Decision is recorded at the Dukes County Registry of Deeds and the recording fee has been paid at the Dukes County Registry of Deeds. Only Original Documents will be accepted at the Registry.
- 2. A receipt for the recording stamped by the Dukes County Registry of Deeds has been returned to the Building & Zoning Inspector of West Tisbury or to the office of the West Tisbury Board of Appeals who will turn over the receipt to the Building and Zoning Inspector.
- 3. The applicants may proceed with applying to the appropriate Town of West Tisbury Officers and Boards for any other development permits which may be required by law.

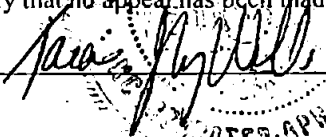
Any person aggrieved by the Decision of the West Tisbury Board of Appeals may appeal to Superior Court and must notify the Town Clerk of the action and submit a copy of the complaint within twenty days after the decision has been filed in the office of the Town Clerk.


A Special Permit shall lapse in 2 years if not utilized. A Variance shall lapse in 1 year if not utilized.

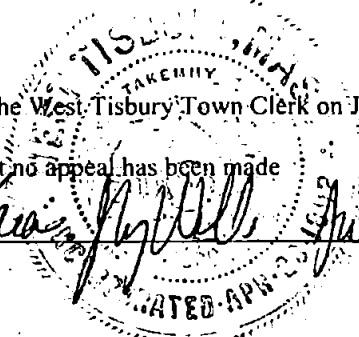
The Building and Zoning Inspector may approve at his discretion, minor changes that come up during the building process. All major changes to the plans or significant material changes must be approved by the Zoning Board of Appeals. Please consult with the Inspector regarding any change. Failure to do so may nullify your permit and may require removal of the unapproved construction.

Filed with the West Tisbury Town Clerk on June 21, 2021

I certify that no appeal has been made

 July 13, 2021  
 TOWN CLERK  
 WEST TISBURY  
 MASS. 02575

 June 21 2021



Case: 2021-19  
Date: June 10, 2019  
Map & Lot: 35-6.15

WEST TISBURY ZONING BOARD OF APPEALS  
RECORD OF VOTE

The following members of the Board of Appeals vote to grant a Special Permit subject to the above stated term (see decision attached).

Julius Zowe (P)

Jeffrey Kaye (P)

Deborah Wells (P)

\_\_\_\_\_

John Rau (P)

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The following members of the Zoning Board of Appeals are in opposition to the grant of the Special Permit.

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