



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

C. DYLAN SANDERS
SANDERS@SUGARMANROGERS.COM

November 4, 2020

Via Email

Martha's Vineyard Commission
c/o Adam Turner, Executive Director
P.O. Box 1447
Oak Bluffs, MA 02557

Re: *DRI # 614 Modification 7 ("Proposed 2020 Modifications")
Harbor View Hotel
Request for a Public Hearing*

Dear Members of the Martha's Vineyard Commission:

On behalf of the many neighbors signed below, I am writing to urge that the Martha's Vineyard Commission ("Commission") find that the proposed 2020 Harbor View Hotel ("Hotel") modifications to DRI # 614 (Modification 7) represent a "Substantial Change" and/or "Development" to a previously approved Development of Regional Impact that warrant a public hearing before the Commission. The proposed modifications are significantly different in scale, kind and nature, and would allow a significant intensification of the use of the Hotel, than what was originally approved in 2008, and modified in 2018.

The modifications include: (1) the addition of an expanded spa which would be more than *five times larger* than that first approved following the first hearing, more than *three times larger* than that approved in 2018 *without* a public hearing before the Commission; (2) a spa that is significantly more commercial in character than that previously approved; (3) a request to demolish an existing building; (4) a request to retroactively approve seven already-built rooms; and (5) a request to remove some rooms from previously approved modifications. Moreover, the applicant's current use of the Hotel – including expanding the Hotel to an adjunct residential house and the recent construction of an outdoor bar and restaurant – is in several respects inconsistent with prior permits and approvals, providing an additional reason to comprehensively review this project anew through a public hearing.

On October 26, 2020, the Commission's Land Use and Planning Committee ("LUPC") voted to recommend that the full Commission hold a public hearing on the 2020 Proposed Modifications. Five Commissioners voted to recommend a hearing and no Commissioners voted

against holding a hearing. The undersigned neighbors of the Hotel request that the Commission follow the recommendation of the LUPC and fully vet what would represent – and in some cases already represents – a significant commercial development for this unique historic residential neighborhood.

As discussed below, under the Commission's regulations the 2020 Proposed Modifications constitute a "Substantial Change" to a previously approved DRI, due to:

- an increase in scale;
- an increase in intensity of use;
- an increase in traffic;
- detrimental impacts to abutters; and
- a change in the neighborhood's character.

In the alternative, the 2020 Proposed Modifications are a "Development" in their own right, because they constitute:

- a material change in use; and
- a structure is being demolished.

Accordingly, the 2020 Proposed Modifications merit a public hearing under the Commission's own criteria, as well as under the Commission's statutory mission.

I. Background

As you know, the Commission was established with a mission to –

protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.

G.L. c. 831, § 1.

Significantly, the Commission was established to ensure that the allowed land uses will not be "unduly detrimental" to the values "threatened...by uncoordinated or inappropriate uses of the land." *Id.*

The neighborhood that the Hotel sits in is a perfect example of the unique historical and cultural values the Commission was formed to protect. It is part of a nationally recognized historic district, with a vibrant, commercial Main Street splitting two neighborhoods replete with some of the Commonwealth's finest Greek Revival and Federalist style homes. The Hotel and its surrounding homes are located approximately half a mile away from the busy Main Street. This neighborhood is a quiet, residentially-zoned district (R-5). The Hotel is a legacy property; and thus, is considered a preexisting, nonconforming commercial use. Many of the below-signed abutters have owned their property for a number of years, and in many cases, decades. The neighbors have seen the Hotel's ownership change over time and have themselves championed its successes, and consider themselves partners with the Hotel as stewards of this historic neighborhood.

Nevertheless, in recent years the neighbors have experienced the Hotel's creeping commercialization into the neighborhood. What individually may seem like minor, incidental uses – like offering bikes and golf cart rides to hotel guests to get to Main Street, or horse and buggy rides around the neighborhood – when taken together are threatening to profoundly and irreversibly change the character of the neighborhood.

What is more, the Hotel has embarked upon a number of unpermitted projects and undertakings that reflect an expansion of commercial activities beyond what might be considered minor or incidental to a hotel use. The Hotel has changed the location of its outdoor bar and increased its intensity of use; what once was a small bar for hotel patrons has dramatically increased in size to become a full outdoor restaurant open to the public, all without Commission review, impacting the neighbors' quiet enjoyment of their homes. In addition, the dock at 119 N. Water Street, which effectively is under the same ownership as the Hotel, is being used by the Hotel as its own dock to offer chartered yacht tours and jet ski rentals, as well as to receive hotel guest arrivals and departures, bypassing the available commercial pier. The Hotel also uses 119 N. Water Street as a short-term rental house, expanding the Hotel's footprint beyond its preexisting, nonconforming lot. These changes – many of them unreviewed by the Commission – have a significant impact on the neighbors' enjoyment of their properties and has noticeably changed the character of the neighborhood and the pristine Edgartown harbor. The addition of a commercial spa at the Hotel is yet another major project that would add to the commercialization of this historic, residential neighborhood. At the very least, the abutters deserve to have their objections to the new spa heard by the Commission at a public hearing.

II. History of the Proposed Spa

In 2008, the Commission approved DRI # 614, a comprehensive application for the improvement of the Harbor View Hotel. Among the approvals was a "small day-spa for hotel guests." 2008 Special Permit Decision, Pages 1, 4. As originally approved, the spa would house

three treatment rooms and would be located in the Penniman Cottage. Summary of Proposed Development and Impacts, Harbor View Hotel, April 24, 2008.¹

Since 2008, the Commission has approved various minor modifications to DRI # 614, ranging from a change in office locations to the installation of cooking units in suites. Relevant here, the Hotel modified its plans in 2009 to house the spa in the Snow Cottage and expand it from 850 square feet to 1,869 square feet. Significantly, the spa was to remain for hotel guests only. DRI # 614 Harbor View Hotel Modification Summary & Plans, July 16, 2009.

Most recently, in 2018 the Commission approved – without a public hearing – a number of modifications, including modifications to the spa (“2018 Modifications”). Rather than locate the spa in a cottage, it would be located in the Main Building, in a 1,620 square foot addition on the south side. DRI 614-M6 Harbor View Hotel Modifications Summary of Changes 2018-06-07. The floorplans stated that the spa would house four treatment rooms, one couples treatment room, a relaxation room and small men and women’s locker rooms. 2018 Modifications Main Building Proposed Floor Plan.

The modifications under review now include the demolition of the existing “Bradley Cottage,” which is currently comprised of eight guest rooms. In its place, the 2020 Proposed Modifications include a 4,625 square foot spa, which would be located on the first floor and in the basement, and four guest rooms on the second floor. This new spa is dramatically larger than the one originally proposed (4,625 square feet versus 850 square feet), i.e., it is three times larger than the only spa configuration to be approved following a public hearing before the Commission. The basement will house six treatment rooms, including two couples treatment rooms. The first floor will include a salon and nail parlor, women and men’s separate relaxation rooms with steam showers, showers, and locker rooms, another treatment room, and a walled garden outside. DRI 614-M7 Harbor View Hotel 2020 Modifications Bradley Cottage Floor Plans 2020-07-29.

¹ The subsequent Zoning Board of Appeals Decision to Grant a Special Permit to the Hotel also states “[t]he first floor of the Captain Penniman Cottage will also house a mini-spa for guests (850 s/f).” Zoning Board of Appeals Decision, Dukes County Registry of Deeds, Recorded on September 21, 2009, Book: 1192, Page: 347.

	2008 Application	2018 Modifications	2020 Proposed Modifications
Square Footage	850	1,620	4,625
Treatment Room	3	5	7
Relaxation Room		1	2
Locker Room		2	2
Changing Room			2
Steam Room			2
Hair Salon			1
Nail Salon			1
Guests Only?	Yes	Unclear	Unclear

Table 1. Summary of Past Approvals and Proposed Modifications.

III. The 2020 Proposed Modifications are so significant that they require a public hearing and full review by the Commission.

Under the Commission’s criteria, modifications to a previously approved DRI trigger a public hearing referral if the modifications are a “Development” or “Substantial Change” to a Development. DRI Checklist 1.2. The 2020 Proposed Modifications are a substantial change to the 2008 Application, which necessitates a public hearing.

A. The 2020 Proposed Modifications should be granted a public hearing because the modifications qualify as a “Substantial Change” under the DRI regulations.

A “Substantial Change” under the regulations is considered to be:

A change to an approved plan that would alter the characteristics of a project (such as scale, massing, footprint, appearance, materials, impact on abutters and streetscape, occupancy, use, etc).

The DRI Checklist, Appendix A, page 14.

1. Scale

The scale of the 2020 Proposed Modifications alone is a Significant Change that warrants a public hearing because the proposed spa is over five times larger in scale than the spa approved in 2008 and over three times what was approved without a public hearing in 2018.

In the past, the never-built spa has undergone various modifications in the Harbor View Hotel's modifications but has always remained under 2,000 square feet. The spa was originally proposed in 2008 as an 850 square foot "small day spa" for hotel guests only. In other materials, it has been referred to as a "mini spa." In its most recent iteration in 2018, the Hotel proposed a 1,620 square foot addition to the Main Building to house the spa, with one relaxation room and small locker rooms.

The 2020 Proposed Modifications, however, no longer detail a "small day spa for guests" tucked away in the Main Building or in a cottage. Rather, the plans indicate a two-floor spa enterprise with several treatment rooms, including two couples treatment rooms, and a nail and hair salon. The men and women's quarters are extensive, and each include their own relaxation room, steam room, changing room, locker room, and showers and bathrooms. These quarters open to a private walled garden with a water feature. This increase in scale is a major change to what was originally approved in 2008 following a public hearing, and modified in 2018 *without* a public hearing. As a result, it raises a number of concerns outlined below.

2. Increase in Intensity of Use

The 2020 Proposed Modifications are a significant change, such that a public hearing should be held, because, due to its expanded size, the spa will increase intensity of use. The DRI Checklist defines "increase in intensity of use" as

Any Development (such as adding tables, fast food, or take-out to a restaurant; adding pumps to a service station; changing the nature of products or services offered; or otherwise changing the type of operation of a business) that is likely to lead to a significant increase in any one of the following: i) vehicular and/or pedestrian traffic; ii) parking requirements; iii) lot coverage percentage; iv) hours of operation; v) water usage, wastewater flow and/or nitrogen loading; vi) energy use; or vii) marine traffic.

DRI Checklist, Appendix A, page 14. Looking at the definition, the addition of infrastructure to increase services – such as spa treatment rooms – is considered an increase in use.

Taking the spa by itself, the increase from three (2008) to five (2018) to seven (2020) treatment rooms for a spa would certainly qualify the 2020 Proposed Modifications as increasing the intensity of use. Taking the spa at its planned location, the Bradley Cottage, the spa is

replacing four guest rooms, dramatically increasing pedestrian traffic and the number of persons going through the building on a daily basis.

The spa will also increase the year-round use of the hotel overall. As an indoor activity, the spa will be a year-round feature that will increase the hotel's attractiveness to guests in the off-season. In addition, the 2018 spa was to be located in the main hotel building. The 2020 Proposed Modifications place the spa in a separate, higher-traffic and more visible area. This is more likely to attract non-hotel guests to the spa and hotel area.

The 2018 Plan provided to the Commission fails to show the 2019 Outdoor Bar and Restaurant constructed across from the proposed spa on a parcel of green space that is still shown on the Plan. This outdoor Bar and Restaurant is open to the public and has already drawn new traffic to the area (see below).

3. Traffic

The larger spa raises traffic and parking concerns, although much depends on the spa's hours, anticipated patrons, and number of employees – information the Hotel has not yet made available. A hearing should be required, among other reasons, to fully vet such information in front of the public.

At the LUPC hearing on October 26, 2020, members of the Commission raised a number of questions that will inform traffic patterns, in particular the anticipated number of spa patrons, whether they will be hotel guests or members of the general public, and the spa's hours of business. Whether the spa will be open to the general public during the summer is a significant detail that the Hotel has omitted from its modification application. At the hearing, counsel for the Hotel indicated that the Hotel does plan to offer its spa services to the general public during the off season, and "hopes that guests will fill the spa" during the summer.

If the spa is open to the public year-round, this raises significant traffic concerns and impact to the abutters and other neighbors. The Hotel is only accessible via a one-way street, which, during the high season, is already crowded by pedestrians, bikers, and drivers. The spa's presence also raises concerns about traffic on N. Water Street during the off-season, where, although N. Water Street might not be as crowded with pedestrians, spa patrons are much more likely to drive to the spa in the cold weather.

Last, although the details have not yet been provided, the larger spa will presumably require more employees, including additional spa technicians, hair and nail technicians, and cleaning employees. This raises similar transportation, traffic, and parking concerns.

4. Impact to Abutters

The 2020 Proposed Modifications are a significant change that should be granted a public hearing because the impact to abutters is considerable, and greater than what was originally approved in 2008. The spa will result in an increase in noise, particularly due to the garden space and water feature, but also due to its increase in size.

The 2008 Commission Decision approving the 2008 spa notes that “the Applicant has worked with its neighbors and has apparently addressed their concerns.” 2008 Decision, page 6. Because the 2020 Proposed Modifications make major changes to the spa – and because the Hotel has changed from that approved in 2008 – the neighbors’ concerns also have changed. Therefore, the Commission should hold a public hearing because the neighbors’ concerns are no longer addressed.

5. Changes to the Character of the Neighborhood

The 2020 Proposed Modifications include significant changes to what was approved in 2008 and 2018. These changes warrant a public hearing because the addition of an independent spa will exacerbate the Hotel’s commercial impact on the neighborhood. The proposed spa is no longer a minor hotel amenity; it is a full-fledged commercial business in a residential neighborhood, able to sneak in via the Hotel’s preexisting use state.

The Hotel is a legacy property, situated in a historic, residential neighborhood of Edgartown. The neighborhood is located far enough from the downtown Main Street area that it has enjoyed peace and quiet for many years. Recent Hotel ventures, however, are changing the neighborhood’s character – and the addition of the spa will only intensify that transformation. These ventures, of which the Hotel has not sought the Commission’s approval, include the following:

Outside Bar and Restaurant

The outdoor bar and restaurant (“2019 Bar and Restaurant”) has changed location and increased intensity of use without the Commission’s approval, despite being a substantial change to a development that is “on a lot which has been, in part or in whole, the subject of a previously approved DRI application.” The 2019 Bar and Restaurant has been built outside the historic pool area as clearly defined in the 1990 and 1992 Special Permits, in a landscaped garden.

The 2019 Bar and Restaurant has been expanded to include a 2,600 square foot patio with couches, tables with umbrellas, new outdoor lighting that is very intrusive to the neighbors and three firepits. The capacity of the 2019 Bar and Restaurant is at least 50 patrons, with standing room for an additional 50 people. The 2019 Bar and Restaurant serves alcoholic beverages and a full menu. Walk-in traffic from the public is encouraged.

Recently, the Town of Edgartown Selectmen voted to limit the hours that the 2019 Bar and Restaurant could serve alcohol to 6:00 p.m. The Hotel successfully appealed this decision to the state Alcoholic Beverages Control Commission and is now able to serve alcoholic beverages until 9:00 pm under the 1990/1992 Special Permits, if enforced, or 11:00 pm under state law. Alcoholic Beverages Control Commission, License # 0116-00177, Memorandum and Order on Appellant's Motion for Summary Decision, June 18, 2020.²

119 N. Water Street

119 N. Water Street is the location of two major unpermitted commercial expansions of the Hotel. The Hotel has been using 119 N. Water Street, which is under the same ownership as the Hotel, as a short-term rental property and *de facto* adjunct to the Hotel without the Commission or Zoning Board of Appeals approval.

The Hotel has also been using the dock at 119 N. Water Street to offer chartered yacht rides to hotel guests and the general public, as well as jet ski rentals. The Conservation Commission's Order of Conditions approving the reconstruction of the dock conditions its use as private and recreational only.

Neighbors are increasingly troubled to see 119 N. Water Street used as an extension of the Hotel. One has to ask: what's to stop the Hotel from purchasing more properties in this neighborhood and doing the same?

Horse and Buggy Rides:

The Hotel has offered horse and buggy rides this fall throughout the neighborhood, raising noise and traffic concerns.

Bikes

The Hotel purchased a fleet of bicycles for hotel guest use. Unfortunately, these bikes are a hazard to pedestrians and vehicles alike on N. Water Street as hotel guests persist on riding them the wrong way on the one way N. Water Street, and they are strewn carelessly across town.

These activities are having an undue impact to the neighborhood, and the addition of an open-to-the-public spa will only intensify its commercialization. Preserving the Island's historical and cultural character is part of the Commission's founding purpose, and the Commission should hear the concerns of neighbors at a public hearing.

² The 2019 Bar and Restaurant is currently the subject of ongoing litigation between the Hotel and abutters.

B. The 2020 Proposed Modifications should be granted a public hearing because the modifications qualify as a “Development” under the DRI regulations.

Alternatively, the 2020 Proposed Modifications could be considered a stand-alone “development,” which would also trigger the need for a public hearing. The DRI Checklist considers “development” to be any of the following:

- (i) any building, mining, dredging, filling, excavation or drilling operation (excluding single-user wells); or
- (ii) **any material change in the use** or appearance of **any structure** or in the land itself; or
- (iii) the dividing of land into lots or Parcels; or
- (iv) a change in the Intensity of Use of land such as an increase in the number of dwelling units in a structure; or
- (v) alteration of a shore, beach, seacoast, river, stream, lake, pond or canal, including coastal construction; or
- (vi) **demolition of a structure**; or
- (vii) the Clearing of land as an adjunct of construction; or
- (viii) the deposit of refuse, solid or liquid waste, or fill on a Parcel of land.

The DRI Checklist, Appendix A, page 13 (emphasis added).

1. Material Change in Use

The proposal is a significant, major change that requires a public hearing because the Bradley Cottage will change from its use as guest rooms to a spa. The DRI regulations look to whether the change in use is one of higher intensity. *See* DRI Checklist, Appendix A, Definitions, “Change of Use,” page 13. Bradley Cottage will change from guest rooms to a spa with guest rooms on the second floor. The nature of a guest room – which is typically rented by one person or set of persons for a demarcated period of time for the primary purpose of sleeping – is fundamentally different than a spa – which various people appear for a period of hours for the primary purpose of improving health and appearance through specialized treatments.

What’s more, the change from a small spa for guests only is materially different than a larger spa, open to the public for three – potentially four – seasons.

2. Demolition of Bradley Cottage

A public hearing is required because the 2020 Proposed Modifications propose the complete demolition of Bradley Cottage. Under the definition included in the DRI Checklist, a

Martha's Vineyard Commission
November 4, 2020
Page 11

demolition of a structure is considered a "development," thus triggering the need for a public hearing.

IV. Conclusion

For all of the foregoing reasons, the neighbors of Harbor View Hotel respectfully request that the 2020 Proposed Modifications be given a public hearing, as they are a "Substantial Change" and/or "Development" to the original 2008 approval, as well as to the 2018 modifications that were approved without a hearing. It has been more than a decade since the last Commission public hearing on this project, and the impact that this ever-expanding commercial enterprise will have on this residential neighborhood, the Commission's own regulations, and fundamental precepts of due process, all weigh in favor of a fresh Commission hearing.

Respectfully submitted,

Neighbors to the Harbor View Hotel,
by their attorney,



C. Dylan Sanders

Neighbors

Jim Swartz, 1 Starbuck Neck Road
Lynn Allegaert, 14 Thayer Street
Geoffrey Caraboolad, 63 Fuller Street
Robert and Linda Forrester, 128 N. Water Street
Joseph E. Smith, Jr., 1 and 3 Ox Pond Meadow
Edwin Brooks, 40 Fuller Street
Richard Zannino, 18 Starbuck Neck Road and 27 Thayer Street
Ann Dickinson, 15 Starbuck Neck Road
Louise Neuhoff, 14 Starbuck Neck Road