

JOSEPH D. WARGO
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May 20, 2021

My wife Lisa and I are direct abutters to the Harbor View Hotel and own the house located at 124 N. Water St. While I am an attorney, we are not represented by counsel in this matter nor are we part of any litigation against the Hotel.

This submission will address two points that I believe, after many hours of public hearing, are still at issue with members of the MVC.

First, I will address whether the Harbor View Hotel has engaged – or is interested in engaging – with the neighborhood concerning neighborhood issues or the Application. Through attachments to this email, it will be quite obvious that the Hotel has no interest in such a dialogue. This is not argument; this is fact as you will see when you read further. This fact directly addresses concerns raised by many Commissioners as to whether the Application process has been collaborative or whether it has in any way taken into account the concerns of the neighborhood. The short answer to this concern is the Hotel has not incorporated neighborhood feedback into its Application. How the one-sided nature of these proceedings impacts this and future deliberations of this body I also discuss, below.

Second, I will address whether the MVC should/can/must consider the current use of the Harbor View Hotel Property in performing the required benefits/detriments analysis that it must perform concerning the Application. Through simple citation to Section 15 of the relevant Act, along with the application of common sense, it is clear that the current use of the Property must be considered by this body.

I. The Harbor View Hotel Has No Interest in Dialogue With The Neighborhood and Has Not Engaged in Dialogue

Attached hereto are two documents for your consideration. The first is a letter my wife and I wrote and sent to all abutters. At our initiative and expense, we sent this letter (using a mailing list provided by the Commission) in an effort to bring the Harbor View Hotel and neighborhood together. We endeavored to create dialogue that would be constructive and solve problems. The letter speaks for itself and I ask that you review it.

We received a positive response to this correspondence, with many neighbors providing their email addresses which (with their consent) I passed along to Scott Little at the Harbor View Hotel. The neighbors' response indicated a thirst for dialogue with the Hotel. Scott was supposed to - and did - use those emails to contact abutters and invite them to Zoom presentations concerning the pending Application and to create a dialogue with the neighborhood.

Instead, the Zoom presentations did not create substantive dialogue. The Hotel did not advance a substantive agenda, but went through slide-show presentations of its Application. It

was pro-forma; a box-checking exercise. It was a waste of time if the goal was to enter into a give-and-take with neighbors. This should come as no surprise to the Commission as it will note the only changes of substance made to the Application have come in response to comments made by this body during Public Hearings.

In order to initiate an actual, substantive dialogue with the neighborhood – which the Hotel indicated it desired – I sent an email on January 15 to Bernard Chiu and Scott Little. I attach that email to this letter and ask that you review it.

As you see in the attachment, my January 15 email asks Bernard and Scott to initiate a dialogue with the neighborhood - a dialogue they said they wanted and maintain in these Public Hearings they still want. Neither Bernard nor Scott responded to my email. Ever.

Still trying to create a dialogue to solve our neighborhood issues like neighbors, I contacted Sean Murphy via email on February 12. I had previous dealings with Sean and respected how he conducted himself. My February 12 email to Sean is contained within the second attachment and I ask that you review it.

As the attachment shows, I forwarded Sean my January 15 email and sought his help in opening up a dialogue between his client – the Hotel – and the neighborhood. As evidenced in his response of the same day, Sean indicated he would speak with Bernard, but that he was “just the messenger;” that it would be up to Bernard whether he wanted to initiate a dialogue with the neighborhood.

At no time since February 12 has anyone from the Hotel actually engaged in a dialogue with me or, to my knowledge, with the neighborhood in an effort to talk about substantive, neighborhood issues or the Application. I heard nothing further from Sean. I am confident Sean would have contacted me about engaging in a dialogue had his client instructed him to do so. To this date, silence from the Hotel has been the only response to my efforts to open a dialogue of any sort – whether formal, informal, conditional, unconditional – with the neighborhood.

Prior to the foregoing, I was optimistic that the Hotel wanted to be a good neighbor, communicate with its neighbors and avoid an adversarial process. The actions of the Hotel as demonstrated in these attachments speak to the Hotel adopting a different approach.

I respectfully submit that the Commission take the foregoing into account. Fostering a climate of cram-downs and advancing an Application that intentionally is devoid of neighborhood input and support is not in keeping with your mission. Nor is it in keeping with fostering a friendly neighborhood environment.

Is this what the Vineyard has become? A place for legal stand-offs and ill will? It has become so if you condone the Hotel’s conduct through approval of the Application. I ask that you do not put your imprimatur on the conduct of the Hotel. Martha’s Vineyard is better than this. Actually, whether Martha’s Vineyard is better than this is all up to each of you. Now.

And even more practically, rewarding the foregoing conduct sets a precedent of unbridled mean-spiritedness. Why talk to neighbors if you can just cram something through the MVC? Does the Commission want to field applications like this one, thus encouraging entrenchment and ill-will? Or would it rather promote dialogue and compromise? The choice is that stark and it is yours to make by you in your next vote.

Please take the above and attached into account. There is only one clear choice here, in my estimation. Stay your ruling on the pending Application. While Scott Little indicated in the last Public Hearing that for his own personal comfort he did not want to spend time with lawyers in a room in mediation, how many cumulative hours has the Commission and the Public put into this Application already? Over the course of these proceedings there have been at least 100 cumulative attendees participating in the Public Hearings for at least 4 hours. That is at least 400 cumulative Public Hearing hours; not to mention the countless hours that have gone into writing and reading written submissions. Perhaps if Scott or Bernard and the neighbors spent 8 hours in a conference room in a good faith mediation, none of the time we all have spent here through these numerous hearings and the voluminous written record would have been necessary.

Dialogue. It advanced Peace at Camp David. Those were real problems. Having neighbors sitting down in front of an intelligent mediator to solve the current issues would be a walk in the park in comparison. Mediation can solve problems much greater than facing the MVC in this Application.

If the Commission believes it does not have authority to order mediation, it should deny the Application without prejudice and suggest that the Hotel engage in meaningful dialogue and compromise.

II. The MVC has the Obligation to Consider the Current Usage of the Property

I must also address certain comments made by Commissioners to the effect that they do not have the authority to consider how the Harbor View Hotel is currently using the Property in reaching its decision on the Application. Nothing could be further from the truth. Indeed, the opposite is true: this body has the **obligation** to consider how the Hotel is currently using the Property in passing on the current Application.

Chapter 831, Section 15 (the MVC Act) expressly requires the Commission to weigh Benefits and Detriments as follows (emphasis added):

DRI Benefits vs. Detriments

In making a finding of the probable benefits and detriments of a proposed development, the commission **shall not restrict its consideration to benefits and detriments within the municipality** of the referring agency, but shall consider also the impact of the proposed development on the areas within other municipalities. **Such probable benefits and detriments shall be considered even if they are indirect, intangible or not readily quantifiable.** In evaluating the probable benefits and detriments of a proposed

development of regional impact **the commission shall consider, together with other relevant factors**, whether:

...
(c) **the proposed development will favorably or adversely affect other persons or property, and if so, whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed;**
...

The foregoing makes quite clear that the current use of the Property **must** be considered in ruling on the Application. How can this body weigh benefits and detriments without considering the totality of the circumstances? “Indirect, intangible and not readily quantifiable” benefits and detriments **must** be considered. **“Other relevant factors”** must be considered. What can be more relevant to consideration of the Application than the current usage of the Property? Circumstances **“peculiar to the location”** must be considered. The language of Section 15 provides the Commission express authority to consider the totality of the circumstances as they exist on the Property today. It is literally impossible for this body to comply with this mandate without considering how the Property is currently being used.

If you do not consider the current usage of the Property, what should you consider? The Property as it existed and was being used in the year 1850? 2000? Five years ago? What is your point of reference? What year will you choose to freeze in time to do your benefits/detriment analysis? How the neighborhood would be impacted as it existed 20 years ago? These examples make plain the obvious answer: you must consider the Property as a whole and the neighborhood as it exists today. You must do so to carry out your mandate pursuant to Section 15 of the MVC Act.

I believe Commissioners may believe they cannot consider the current usage of the Property because such consideration, in their mind, is tantamount to adjudicating the propriety or legality of the current uses. They are concerned that some of the current uses of the Property are not properly before the Commission or are outside its jurisdiction and therefore may not be considered in their analysis. As shown below, such thinking is faulty.

This Commission always considers land use issues occurring on properties that are governed by numerous federal, state, local environmental, etc. laws. In conducting its benefits/detriment analysis, this body considers the property as it finds it. It may not have “jurisdiction” over use or activity occurring on the land pursuant to those laws. **Instead, it accepts the usage of the property as it currently exists and fashions a remedy reflective of that use. That is all you are being asked to do here.**

You are not being asked to approve or disapprove of the use of the Hotel Green Space; the Hotel’s use of the private home across the street; the amount of seating at the bar area; the number of lights at the bar or its hours of operation; the use of the pier. You are being asked to **consider** these uses and the benefits/burdens that come with them in passing on the Application. These

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current uses reflect the hand that you have been dealt. Today, ignoring these uses would be like conducting your analysis based on the Property as it existed years ago. Such an analysis would have no value because it would fail to address the benefits/burdens of the Property as of today. Your task is to perform a relevant analysis of the benefits/burdens based on the Property as it exists today, not years ago.

When you carry out your mandate pursuant to Section 15 of the Act, there is only one conclusion to reach: further development of the Property overburdens it and the neighborhood.

However, in keeping with my previous efforts to bring the Hotel and neighborhood together – and in hopes of avoiding further piecemeal consideration of one use after another – I again request that you stay these proceedings (or deny the Application without prejudice) and order the Hotel and neighborhood to the negotiation table so we can develop one, comprehensive plan and together, jointly, come to the MVC seeking its approval.

I appreciate your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph D. Wargo', written over a circular scribble.

Joseph D. Wargo

JDW/jlb
Enclosures

December 18, 2020

Dear Neighbor,

You are receiving this letter because you are an abutter to the Harbor View Hotel in Edgartown, MA. However, this is not an official letter, but only a neighborly one.

We are the owners of the house at 124 North Water Street. We are two doors down from the Harbor View Hotel and share a property line with the Hotel. As such, and like all of us, we have a direct interest in any news or development related to the Hotel.

As many of you may know, the Hotel currently has a pending Application to construct a spa. This Application is scheduled to be heard by the MV Commission on January 7.

We are not parties to any litigation with the Hotel and have not formed an opinion as to the merits of the Application. Our interest is in creating a dialogue between the Hotel and the neighborhood — one that would include the current Application as well as extend beyond the Application itself. We all are neighbors and as such should be in communication with each other on matters of shared importance.

We have discussed with the Hotel its Application and they have offered to explain the Application via a Zoom call. The call has been scheduled for Tuesday, December 29th at 10:00AM. If you are interested in participating on the call, please respond to our email addresses (below) with the email address you would like to use for the call. While I am a lawyer by profession, I am not acting as a lawyer in this matter and only as an interested neighbor. No one has asked us to send this letter or initiate this process.

If you are in email contact with other neighbors who you believe would be interested in participating, please let them know about the scheduled call and have them contact us with their email address.

Thank you, neighbor!

Sincerely,
Joe Wargo (jwargo@wargofrench.com)
Lisa Wargo (lgwargo@aol.com)

From: Sean Murphy <sem@edgartownlaw.com>
Sent: Friday, February 12, 2021 3:38 PM
To: Wargo, Joseph D.
Subject: RE: Follow up - two points

*** External E-Mail – Use Caution ***
Joe,

I will speak with Bernard, however, as you know I am just the messenger. If my client does not want me to respond I would have to abide by his directions.

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From: Wargo, Joseph D. <jwargo@wargofrench.com>
Sent: Friday, February 12, 2021 10:02 AM
To: Sean Murphy <sem@edgartownlaw.com>
Cc: Wargo, Joseph D. <jwargo@wargofrench.com>
Subject: Fwd: Follow up - two points

Sean,
Good morning.

I wanted to send you the below email exchange and ask whether you think it would be possible to initiate a dialogue between the neighborhood and Bernard as I was attempting to do, below. Unfortunately neither Bernard nor Scott responded to my email. My take away from that non-response (beyond being unfriendly and not in keeping with our relationship) was that they were not interested in a broader attempt to compromise.

My wife and I do support some version of the spa as to some others in the neighborhood. I do believe we can generate support for a spa, provided that Bernard is willing to compromise on some other current uses. And I

think some of those other uses Bernard already has walked away from. So, I think now may be a good time to have such a discussion, if there is one to be had.

The goal would be to have a "consent proposal" submitted to the MVC concerning the use of the property moving forward. It would be nice to get all of this behind us.

I would appreciate some type of response from you about this proposal.

Thank you for your consideration.

Joe.

Joseph D. Wargo
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E-Mail: jwargo@wargofrench.com
Website: www.wargofrench.com

Begin forwarded message:

From: "Wargo, Joseph D." <jwargo@wargofrench.com>
Date: January 15, 2021 at 4:14:15 PM EST
To: Bernard Chiu <bchiu@uplandcapital.net>, Scott Little <scott.little@harborviewhotel.com>
Subject: Follow up - two points

Bernard and Scott:

Two items:

First,
Here is another email address for your list:

Edith Catlin
edithcatlin@gmail.com

Second, I have had additional discussions after my call with Scott yesterday. I believe it is fair for me to say that if I could represent Bernard is willing to compromise regarding issues of how the property is being used, we could start a dialogue whereby the neighbors would put specific requests on the table for discussion. Some of the things I raised with Scott yesterday include: hours of operation, number of people on site, use of the pier, use of the house across the street, the spa, noise levels, etc. The notion is that Bernard would agree to compromise on these type of issues even though he may not have the legal obligation to do so.

In exchange, we would buy Peace.

As a wise man once said, you have to give concessions to get concessions.

Ideally, Bernard would send me an email stating the above and I would share that email. I would then obtain a list from the neighbors to begin discussions. I was clear that the list would not include “tear it down” type demands.

Once in that posture, it may or may not be beneficial for me to be on point. Perhaps we locate a respected mediator from Boston, for example. I could be more in the background. But if we can get to this point, at least we’re talking and have a chance.

I look forward to hearing from you. Have a great weekend.

Joe.

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