AIDYLBERG III, INC.’S RESPONSES TO MARTHA’S VINEYARD COMMISSION STAFF QUESTIONS

DECEMBER 20, 2021 – THE ANSWERS TO MVC STAFF QUESTIONS IN THE BELOW MEMO ARE PROVIDED BELOW EACH QUESTION

ALL ATTACHMENTS LISTED ARE INCORPORATED HEREIN BY REFERENCE

AIDYLBERG III, INC. (“AIDYLBEG III”) RESERVES ITS RIGHT TO CHALLENGE THE JURISDICTION OF THE COMMISSION BASED ON STAFF ASSERTIONS THAT: 1) AIDYLBEG III MIGHT BE CONSIDERED A MODIFICATION OF DRI 569 (AIDYLBEG 2); AND 2) AIDYLBEG III TRIGGERS JURISDICTION UNDER ITEM 8.1A (DEMOLITION OF HISTORIC STRUCTURES)

MEMO
Date: Nov. 12, 2021
To: Peter Freeman
From: Alex Elvin
Re: Follow-up to Nov. 9 MVC staff-applicant meeting for Aidylberg 3 / 38 Wing Road demolition (DRI 714)

Dear Peter,

Please see below for a list of questions and additional information that was discussed during the Nov. 9 staff-applicant meeting for the Adylberg 3 / 38 Wing Road demolition proposal.

*Aidylberg III, Inc. reserves the right to supplement and/or revise all of the answer, explanations and Exhibits provided below.*

Questions regarding the former house at 38 Wing Road:

1. When was the house last occupied?
   *February 20, 2015*
2. Any structural reports, investigations, or narratives documenting the condition of the house at the time it was demolished.
   *See Exhibit A*
3. Any recent or historical photos of the house.
   *See Exhibit B (same as Exhibit A)*
4. Description of any alternatives to demolition that were pursued (renovation, relocation, etc.).
   *See Exhibit C. The cost of restoring the house was extremely high; and in any event, restoration would have accommodated at most two (2) possible elderly housing units instead of the five (5) being proposed. What’s more, to provide suitable units for elderly within the building would have necessitated an elevator to the second floor, whereas all of the unit being proposed provide one floor living for seniors. The proposed five (5) unit project best fulfills the Applicant’s non-profit mission.*
5. Were any portions of the building salvaged or reused?

No.

Documents and information requested for the Aidylberg 3 proposal:

1. Project plan set (full-size PDF and paper copies; paper copies can be dropped off or mailed to the MVC office – see contact info below).
   See Exhibit D; full size plans to be delivered to MVC office.
2. Full-size PDFs of the renderings and elevations.
   See Exhibit E; full size plans to be delivered to MVC office.
3. Elevations of Aidylberg 1 and 2 (as built, if possible).
   See Exhibit F
4. Lighting plan and/or narrative, including locations and fixture types.
   To be determined
5. Engineered drainage plan.
   See Exhibit G – to be provided
6. Specific energy standards that will be met for the project (Stretch Code, IECC, Energy Star, etc.).
   See Exhibit H
7. Documentation regarding the need for propane AC units. (It was stated at the meeting that electric units would stop working below 5 degrees, and that more information could be provided from the manufacturer.)
   See Exhibit I
8. Latest septic system plan and permit, including make and model, monitoring procedures, etc.
   See Exhibit J
9. Total square footage of existing and proposed impervious surface on the parcel.

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<thead>
<tr>
<th>Description</th>
<th>Number</th>
<th>Percentage</th>
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<tr>
<td>Existing impervious:</td>
<td>0</td>
<td></td>
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<tr>
<td>Proposed buildings:</td>
<td>6,809 SF</td>
<td>19%</td>
</tr>
<tr>
<td>Parking and paved areas:</td>
<td>14,964 SF</td>
<td>41%</td>
</tr>
<tr>
<td>Open (grass) areas:</td>
<td>14,409 SF</td>
<td>40%</td>
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10. Financial pro-forma that was submitted with the 40B application.
    See Exhibit K
11. Any letters from town boards or the public regarding the proposal.
    See Exhibit L
12. Table showing income restrictions and square feet for each proposed bedroom.
    See Exhibit M

Additional questions:

1. When was the property that was originally owned by Marguerite Bergstrom subdivided for Aidylberg 2?
   December 11, 2002
2. How many units were in Aidylberg 1 at the time it was built, and what is the total square footage of that building?
   4,275 GSF
Also to follow up our conversation on Nov. 9, I would like to clarify that the project is being reviewed as a DRI mainly because it triggers item 8.1a of the DRI Checklist:

**Demolition of Historic Structures**
Any Demolition (or any exterior alteration of an historic or architecturally significant feature, as determined by the local Historic Commission or, in the absence of such a Commission, by a comparable entity in the Town) or relocation of a structure that either:

a) has been identified as having historic significance by a local historic commission or architectural commission, by a general plan of the Town, by the Massachusetts Historical Commission, or is listed with the National or Massachusetts Registers of Historic Places – **Mandatory Referral and MVC Review**

b) is more than 100 years old. – **Mandatory Referral Requiring MVC Concurrence**

This section 8.1 does not apply to structures located within:

- established historic districts and which are already protected by local historical or architectural MVC review that has the legal authority to condition and permanently deny an application; or

- the Martha’s Vineyard Camp Meeting Association’s Wesleyan Grove National Historic Landmark District.

Please note that item 8.1a was essentially the same in version 13.1 of the Checklist, which was in effect when the town issued a demolition permit for 38 Wing Road in 2019:

**Demolition of Historic Structures: The Demolition of any structure that:**

a) has been identified as having historic significance by a local historic commission or architectural commission, by a general plan of the Town, by the Massachusetts Historical Commission, or is listed with the National or Massachusetts Registers of Historic Places (see attached map); or

b) was constructed before January 1, 1900 – with MVC Concurrence

**Exempted from this section 8.1 are structures located within:**

- established historic districts and which are already protected by local historical or architectural commission review that has the legal authority to condition and permanently deny an application; or

- the Martha’s Vineyard Camp Meeting Association’s Wesleyan Grove National Historic Landmark District.

Despite the fact that the town had issued a demolition permit in 2019, the demolition must be reviewed by the commission because the house was listed in MACRIS.

**AS STATED ABOVE, AIDYLBERG III CHALLENGES THE ABOVE ASSERTIONS; SEE MEMORANDUM FROM ISLAND ELDERLY, INC. TO ALEX ELVIN DATED JULY 13, 2021, ATTACHED HERETO AS EXHIBIT N**

The Aidylberg 3 development project also triggers item 4.1 of the Checklist (version 14):

**Multiple Residential Units**
Any Development, including an expansion or Change of Use of an existing Development, which proposes to create or allow or make available any of the following:

a) 5 or more Dwelling Units including guest houses (i.e., a subordinate dwelling in common ownership with the principal dwelling on the same Parcel) — Mandatory Referral Requiring MVC Concurrence

[...]

However, item 4.1 includes the following exemption:

If all of the Dwelling Units and/or rooms for lease in a Development are Deed Restricted, the threshold for DRI review is increased from 5 to 10, provided that the Development:

i. must comply with the MVC Water Quality Policy, in effect as at the date of the DRI application; or

ii. must be approved to be connected to the Town sewer prior to construction of any Dwelling Unit; or

iii. must install a waste treatment facility with a guaranteed (or State certified) nitrogen effluent removal performance equivalent to that of the Town sewer, in all cases, as determined by the MVC Water Resource Planner.

It appears that the project may qualify for this exemption, since the units will be deed-restricted and the project will include an advanced denitrification system. We will get back to you as soon as possible once the MVC Water Resources Planner is able to review the proposal and make that determination.

AIDYLBERG II ASSERTS THAT THE PROJECT DOES QUALIFY FOR THIS EXEMPTION DUE TO ITS USE OF AN ADVANCED DENITRIFICATION SYSTEM

Finally, the proposal might be considered a modification of DRI 569 (Aidylberg 2), which the Commission approved in 2003 and which contemplated the property at 38 Wing Road as the final phase of the three-phase development. (38 Wing Road was a separate property at that point, but was included in the approved plans and other application materials.)

AIDYLBERG III ASSERTS THAT THE PROJECT SHOULD NOT BE CONSIDERED A MODIFICATION OF DRI 569 (AIDYLBERG II) FOR MULTIPLE REASONS, INCLUDING:

1. AIDYLBERG II WAS PERMITTED AND BUILT IN 2002 AND 2003; ANTI-SEGMENTATION CONSIDERATIONS TAKE INTO ACCOUNT THE AMOUNT OF TIME THAT HAS PASSED BETWEEN PROJECTS; AND A PASSAGE OF 18 YEARS IS SUCH A SIGNIFICANT SEPARATION THAT THE PROJECTS SHOULD BE CONSIDERED SEPARATE;

2. OWNERSHIP AND OPERATION OF AIDYLBERG III IS SEPARATE FROM THE OWNERSHIP OF AIDYLBERG II AND III.

3. FUNDING FOR AIDYLBERG III IS SEPARATE AND UNRELATED TO FUNDING FOR AIDYLBERG I AND II.

4. THE TOWN OF OAK BLUFFS ZONING BOARD OF APPEALS GRANTED A COMPREHENSIVE PERMIT UNDER M.G.L. c. 40B, §§ 20-23 (“40B”) FOR AIDYLBERG I ON JULY 15, 2002 FOR FIVE ELDERLY RENTAL APARTMENTS, AND THEN GRANTED A COMPREHENSIVE PERMIT UNDER 40B FOR AIDYLBERG II ON NOVEMBER 20, 2002 FOR FIVE ELDERLY APARTMENTS. NEITHER DECISION MENTIONED PHASING, NOR ANYTHING ABOUT A PHASE III.

5. LIKewise, the MVC DRI decision for Aidylberg II dated October 2, 2003 made no mention of phasing, nor anything about a Phase III.

6. THE ABOVE FACTS, AND MOST ESPECIALLY THE VERY LONG GAP BETWEEN AIDYLBERG II AND AIDYLBERG, CLEARLY SHOW THAT THE PROPOSAL TO PROCEED WITH AIDYLBERG III AT THIS TIME
WAS IN NO WAY MADE TO EVADE MVC REVIEW.

In any case, the project must be reviewed as a historic demolition under Checklist item 8.1a.

Please let me know if you have any questions or would like to discuss anything in more detail.

Thanks,

Alex

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