



MARTHA'S VINEYARD COMMISSION

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DRI Staff Report – June 26, 2010

C.R. #1 2010 - Little House Café – Concurrence Review

1. DESCRIPTION

- **APPLICANT:** Hocine and Jenik (Munafo) Khelalfa and Merrick and Steven Carreiro.
- **PROJECT LOCATION:** 339 State Road, Tisbury Map 23-A Lot 21 (0.24 acres)
- **PROPOSAL:** To convert an existing building (1,118 s.f.) from a retail use (antique store) to a 31-seat restaurant.
- **ZONING:** B-2
- **LOCAL PERMITS:** Building Permit (already issued); Board of Health (already approved); Zoning Board of Appeals for 1/3 decrease in parking.
- **SURROUNDING LAND USES:** Businesses
- **PROJECT HISTORY:** The applicants proposed a 33-seat (subsequently lowered to 31 because of BOH septic limitations) restaurant and inquired of the building inspector whether their proposal would need to be referred to the MVC as a DRI. They were told that a restaurant is a “permitted use in B-2 zoning” and would not be referred to the MV Commission. Apparently the Building Inspector had the 50-seat threshold for a restaurant in the B-1 in his mind (DRI Trigger 3.2d) whereas the proposal is in B-2 which requires any food service establishment be referred. The applicants next consulted with Chris Alley at Schofield, Barbini, and Hoehn about a septic system and had a conversation with Doug Hoehn who asked if they were being referred to the Commission, he was surprised when they said no. This prompted the applicant to call Ken Barwick again and make sure they understood him correctly. They then went to the Board of Health for pre-approval in early February 2010 and again were not referred to the MVC. After the Board of Health issued their approval the applicants made an offer to purchase the property with the contingency that they be granted the necessary permits to open a food service establishment. Once the Building Permit was issued they proceeded to purchase the property. However, once they bought the property and applied to the ZBA for a decrease in the amount of required parking, they were referred to the MVC for a DRI concurrence review. The small building has been a residence, a travel agency, and most recently an antiques store.
- **PROJECT DESCRIPTION:** To convert a existing building (1,118 sf) from a retail use (antique store) to a 31-seat restaurant on upper State Road in Tisbury.
 - The restaurant would operate seven days a week year-round from about 6 a.m. to 6 or 7 p.m., possibly later during the summertime.
 - They would have offerings from around the globe with items pre-packaged to go like Louis’ and Biga.
 - There would be counter service with tables; no table service at this time.
 - They would have a light breakfast menu and a more varied lunch including ethnic foods and meals to go. Dinner would be like lunch with two specials.
 - They do not plan to apply for beer and wine at this time.
 - There is a newly installed Title 5 septic system sized for a 31-seat restaurant.
 - The applicants considered leasing Louis’ which has since been sold to a propane company.
 - The property was purchased partly with an S.B.A. backed loan for a restaurant.

2. ADMINISTRATIVE SUMMARY

- **DRI REFERRAL:** Zoning Board of Appeals; June 14, 2010.
- **DRI TRIGGER:** 3.1f; 3e.1j; 3.2e; 3.2f (All are concurrence reviews).
 - *Commercial, Storage, Office, Industrial: Any development of commercial, active storage, office and/or industrial lands or building(s), or any private educational facility that has one or more of the following: F) Any change of use of part or all of the building (including conversion of basements, storage space or other exempt floor space to active floor space) – with the concurrence of the Martha’s Vineyard Commission; J) Is on the list of Very High Traffic-Generating Businesses provided as Attachment A Part 1 – with the concurrence of the Martha’s Vineyard Commission*
 - *Other Commercial and Industrial Facilities: Any development for a new or proposed expansion of: E) Any public restaurant or food establishment outside of a B-1 Zoning District – with the concurrence of the Martha’s Vineyard Commission; or F: Any commercial activity or development outside the B-1 Zoning District which would require relief from Town parking regulations or which would require parking off-site – with the concurrence of the Martha’s Vineyard Commission.*
- **MEETINGS**
 - **Pre-Application meeting with staff:** June 21, 2010
 - **LUPC:** Monday June 28, 2010
 - **Site visit:**
 - **Public Hearing:** To be determined if necessary on Thursday July 1, 2010

3. PLANNING CONCERNS

- **SOME KEY ISSUES**
 - Wastewater: The proposal is on a very small parcel in a severely nitrogen sensitive watershed (Tashmo) in a business district that does not currently have sewers.
 - Traffic: The site is located on one of the busiest stretches of road on the Island.
- **ENVIRONMENT**
 - **Vegetation:**
 - **Habitat:** The property is not an NHESP habitat.
 - **Landscaping:** The applicants plan to keep about 1/3 of the property in green space and have a kitchen garden.
 - **Open Space:**
 - **Lighting:**
 - **Noise:**
 - **Energy/Sustainability:**
 - **Waste Management:** The applicants plan to save all food scraps for a pig farmer.
 - **Water:**
 - **Wastewater / Stormwater:** (see the complete water quality / wastewater report in the appendix)
 - The project is located in the Tashmo watershed, a nitrogen-sensitive coastal pond identified in the Interim Water Quality Policy as an Impaired Water body. Within this watershed, projects are limited to 5.6 kilograms of nitrogen per acre per year; on this parcel, this would be only 1.4 kilograms. The estimated loading from the restaurant is 31.5 kg/year.
 - Within the watershed of an Impaired Water body, the Policy requires an applicant to either meet the loading limit for the parcel or implement the basic nitrogen reduction techniques and offset the remaining nitrogen load by mitigation elsewhere in the watershed. The Policy offers a “grandfathering” of wastewater flow based on previous use, but the flows here are of no help.
 - There are several reasons that suggest that Upper State Road might be sewered and tied into centralized wastewater treatment in the foreseeable future. It is common practice, especially on Cape

Cod, to not require individual property owners to make significant investments in on-site wastewater systems in areas where there is likelihood that the property will be connected to a centralized system in the foreseeable future. Instead, the owner puts money into an escrow fund which is later used to either connect to the sewer or for an alternative form of wastewater treatment if it becomes clear that there will not be any centralized treatment.

- In addition, the Massachusetts Estuaries Project for this watershed is planned for completion in the near future. This will change the current nitrogen load limit for the watershed and become the basis for a change to the MVC Policy as well as a more accurate solution to the nitrogen excess. Also, after some years in operation, the actual water use associated with this project will be available from meter records to allow a more accurate estimate of the nitrogen load.
- The Applicant had obtained permits to install a new septic system that was ordered and installed at the time it was referred to the MVC. This system offers no de-nitrification treatment.
- Given the uncertainty of possible nitrogen reduction options in this area at this time that should be clarified in the foreseeable future, the MVC could consider the following approach.
 - 1) Allow the project to go forward at this time with an agreement to fund an escrow account with \$3000 each year for five or more years to be used for nitrogen reduction to meet the watershed limit. (The \$3000 for five years should provide adequate funds for either solution outlined below, namely connection to a sewer line with a grinder pump and pressure sewer line or installation of a composting toilet.)
 - 2) At the end of five years, the Café would consult with the Town and the MVC to determine the best use of the funds implementing one of the options below or another not listed that will offer the same or better resolution to the nitrogen excess.
 - a. Tie into Town sewer at that time or at a known date acceptable to MVC. Remaining funds would revert to the Café. This option would likely meet the Policy load limit for the parcel.
 - b. Should a sewer connection not be available, use the funds to install a composting toilet. This would remove about 75 to 80% of the facility's nitrogen load. Nitrogen loading would be reevaluated to determine the extent of any possible additional nitrogen reduction required in relation to the MEP limits and a solution determined for resolving the remaining nitrogen that must be offset within the following 5 year period. Any funds remaining in the escrow account after installing the compost unit would be available for implementing this solution, if necessary, and any funds remaining in the account would be remitted to the owners. Alternatively, if needed, additional annual payments of \$3000 might be required to fund the additional treatment or offsite mitigation. (For example, this could involve installing or sharing part of the cost of a second composting toilet on another property located in the watershed.)
 - 3) In the interim, the applicant should implement the following "best effort" actions, which would offer some nitrogen reduction:
 - Use bio-degradable plates, cups and utensils recycled appropriately. This would mean that the food waste from these sources would not go into the wastewater stream.
 - Remove all food waste from food preparation and cooking utensils; store and transport it to a compost operation or other means of off-site disposal.
 - No residential uses.

• **TRANSPORTATION**

- o **Traffic Summary:** MVC Staff is preparing a traffic scope for Monday at LUPC.
- o **Access:** The entry is on State Road and the exit is on a private right of way between this property and the SBH building that leads back to Sun Storage.

- **Parking:** The site plan shows 13 parking spaces. The surface is proposed to be crushed shells. The applicants plan to have a bike rack in front.
- **Public Transit:** The property is located along a main bus route.
- **AFFORDABLE HOUSING**
 - The proposal to convert an existing building from a retail store to a restaurant does not trigger the MVC's Affordable Housing Policy because it is not a new commercial development of 2,000 square feet or more.
- **ECONOMIC IMPACT**
 - It is anticipated that there will be 4 year-round employees that include two partnering managers
 - There will be no wait service at this time but that could change in the future.
 - The proposed conversion will create a small number of temporary jobs in the construction and professional service sector industries.
 - The proposed project to allow a restaurant will generate additional meals tax revenue for the town of Tisbury.
- **SCENIC VALUES**
 - **Streetscape:**
 - **Building Massing:** The exterior of the building is not being expanded.
 - **Architectural Detailing:**
 - **A.D.A. Accessibility**
- **LOCAL IMPACT/ABUTTERS**

4. CORRESPONDENCE

- **TOWN OFFICIALS:**
- **ISLAND ORGANIZATIONS:**
- **PUBLIC:**

Appendix 1: Wastewater and Water Quality – Bill Wilcox

- The project is located in the Tashmoo watershed, a nitrogen sensitive coastal pond identified in the Interim Water Quality Policy as an Impaired Water body. Within this watershed, projects are limited to 5.6 kilograms of nitrogen per acre per year. On a parcel this size, the Policy allows only 1.4 kilograms.
- Within the watershed of an Impaired Water body, the Policy requires an applicant to either meet the loading limit for the parcel or implement the basic nitrogen reduction techniques. Any remaining nitrogen load must be offset by mitigation elsewhere in the watershed. The Policy also offers a “grandfathering” of wastewater flow based on previous use; however the low flows characterizing this parcel are of no help.
 - o There are several reasons that suggest that Upper State Road might be sewerred and tied into centralized wastewater treatment in the foreseeable future.
 - The just-completed Wastewater Management Study has identified Upper State Road as an area where sewerred to lower watershed nitrogen loading appears to make sense.
 - Upper State Road has been identified as a future growth area – an Opportunity Area – in the Island Plan. However, the current nitrogen loading limits would not allow the type of compact, mixed use, infill development suggested in the plan.
 - The Tisbury Planning Board has prepared a plan for higher-density development of this area and Town Meeting has approved the related development of a connector road system. Additional wastewater treatment to deal with sanitary requirements and nitrogen loading would be needed to allow this to happen.
 - The sewage treatment plant is nearby reducing the cost of piping wastewater to treatment. So although town discussion of this is at an early stage, it would seem very possible that the area may be sewerred in the foreseeable future.
 - o It is common practice, especially on Cape Cod, to not require individual property owners to make significant investments in on-site wastewater systems in areas where there is likelihood that the property will be connected to a centralized system in the foreseeable future. Instead, the owner puts money into an escrow fund which is later used to either connect to the sewer or for an alternative form of wastewater treatment if it becomes clear that there will not be any centralized treatment.
 - o In addition, the Massachusetts Estuaries Project for this watershed is planned for completion in the near future. This will change the current nitrogen load limit for the watershed and become the basis for a change to the MVC Policy as well as a more accurate solution to the nitrogen excess. Also, after some years in operation, the actual water use associated with this project will be available from meter records to allow a more accurate estimate of the nitrogen load.
 - o The Applicant had obtained permits to install a new septic system that was ordered and installed at the time it was referred to the MVC. This system offers no de-nitrification treatment.
- **Water Use and Nitrogen Load:**
 - o Water meter data acquired from the Tisbury Water Department indicate a history of very low water use as follows (in gallons per year; all years ending June 30): 2009 = 3000 gpy; 2008 = 2000 gpy; 2005 = 1000 gpy; 2004 = 1000 gpy; 2003 = 57,000 gpy; 2002 = 5000 gpy.

- The design flow for the new wastewater system is 1085 gallons per day. We often assume actual flow to be 60% of the design flow or 651 gpd (237,615 gallons/year). This is much higher than previous annual use.
- The MVC Policy calls for the use of 35 ppm for determining nitrogen loading. Based on the flow estimate of 60% of Title 5, the annual wastewater nitrogen load would be 31.5 kilograms per year.
- Wastewater from restaurants is often described as being high strength. This is variably based on the oxygen demand (BOD), the grease content and, in some cases, the nitrogen content.
- In residential settings, the **nitrogen sources** break down as follows:
 - Toilet flush 78%
 - Garbage disposal 5%
 - Shower, sink, appliances 17%
- Staff could not find a similar break down for restaurant wastewater. More extensive food preparation in a restaurant is likely to increase the wash water source of nitrogen to a higher percentage than residential use but exactly what percentage is impossible to say. How the staff handles the food wastes is one determinant of the “strength” of the wastewater effluent. Careful scraping and removing food wastes from the wastewater flow should lower the nitrogen.
- However, the effect of separating food waste from the wastewater flow on the net nitrogen remaining in the wastewater flow is not clear.
- **Options to Address Nitrogen Excess:**
 - Given the lack of clarity of possible nitrogen reduction options in this area at this time that should be clarified in the foreseeable future, the MVC could consider allowing the project to go forward at this time with an agreement to fund an escrow account with a certain amount of money each year for five or more years that would be intended for nitrogen reduction to meet the watershed limit. At the end of five years, the Café would consult with the Town and the MVC to determine the best use of the funds implementing one of the options below or another not listed that will offer the same or better resolution to the nitrogen excess:
 - Tie into Town sewer at that time or at a known date acceptable to MVC. Remaining funds would revert to the Café. This option would likely meet the Policy load limit for the parcel. Should a sewer connection not be available, the Café would use the funds to install a composting toilet. This would remove about 75 to 80% of the facility’s nitrogen load but the project would still exceed the current limit. Nitrogen loading would be reevaluated to determine the extent of any possible additional nitrogen reduction required in relation to the MEP limits. Any funds remaining in the escrow account after installing the compost unit would be the basis for resolving the remaining nitrogen that must be offset within the following 5 year period.
 - If the restaurant nitrogen sources break down in a similar proportion to residential, with 22% of the nitrogen coming from non-toilet use, the annual load from sink and dishwashing would be 6.9 kilograms. The remaining nitrogen load would be offset by either installation of a second composting toilet elsewhere in the watershed or contribution to a nitrogen offset account. The off-site composting unit would result in an additional 5.3 kilogram nitrogen load reduction (based on average Tisbury residential water use rate of 210 gpd and assuming 78% of nitrogen is in the toilet flush water). This would bring the net load down to near the load limit for the property.

- The cost for either solution at a point 5 years in the future is not certain but \$3000 annual contribution should provide adequate funds for either connection to a sewer line with a grinder pump and pressure sewer line or installation of a composting toilet.
- In the interim, the applicant should implement the following “best effort” actions, which would offer some nitrogen reduction:
 - Use bio-degradable plates, cups and utensils recycled appropriately. This would mean that the food waste from these sources would not go into the wastewater stream.
 - Remove all food waste from food preparation and cooking utensils; store and transport it to a compost operation or other means of off-site disposal.
 - No residential uses.
- Note: Staff is not sure if it is legal to remove restaurant food waste to an animal operation and probably not to a composting operation unless it is certified in some manner.