

# Comments on Proposed Modifications to DRI # 614

Dylan Sanders <sanders@sugarmanrogers.com>

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To: Adam Turner <turner@mvcommission.org>; Alex Elvin <elvin@mvcommission.org>; Lucy Morrison <morrison@mvcommission.org>;

Cc: Alessandra Wingerter <wingerter@sugarmanrogers.com>;

Adam, Lucy, Alex,

Please see the comments from the neighborhood outlined below regarding the Proposed 2020 Modifications to DRI # 614. Thank you for guidance concerning the process.

Dylan

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RE: Proposed 2020 Modifications to DRI #614, Harbor View Hotel

Dear Martha's Vineyard Commission, LUPC, and Staff,

I write to submit concerns regarding the 2020 Proposed Modifications to the Harbor View Hotel DRI # 614 on behalf of certain neighbors to the project, including the following:

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 & 3 Ox Pond Meadow  
Edwin Brooks, 40 Fuller Street

Mr. and Mrs. Richard Zannino, 18 Starbuck Neck Road and 27 Thayer Street  
Ann Dickinson, 15 Starbuck Neck Road

For the reasons discussed below, the 2020 Proposed Modifications are a significant enough change to the approved DRI that they require a public hearing. The latest set of proposed modifications in this multi-phased project represent a significant development and substantial change to an ever-expanding commercial enterprise in a residential neighborhood. Accordingly, the abutters of Harbor View Hotel request that the LUPC refer these modifications to the Commission, and recommend that the Commission hold a public hearing on the proposals.

The comments below are not intended to be an exhaustive list of the neighbors' concerns, but only the chief reasons the proposed modifications should be referred to the full Commission and receive a public hearing.

Section 1.2 of the DRI Checklist states:

*1.2 Modifications to Previous DRIs: Any **Development** or 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 – with MVC Concurrence*

*This section does not apply to:*

*a) properties for which a previous DRI application has been denied, or withdrawn, or for which a previous DRI approval has expired without implementation; or*

*b) subsequent Development within a subdivision of land approved by the MVC as a DRI that is in conformance with the MVC decision, unless the Development triggers a DRI Checklist item in its own right or the DRI decision approving the subdivision calls for further MVC review and approval.*

DRI Checklist, Section 1.2, page 5.

**Comment No. 1: The 2020 Proposed Modifications should be referred to the full Commission because they are a "Substantial Change" to what was previously approved.**

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 proposal is a significant change that should be referred to the full Commission because the proposed spa is over **three times larger** in scale than the spa approved in 2008 and 2018.
  - a. In the past, the never-built spa has undergone various modifications in the Harbor View Hotel's modifications, but has always been under 2,000 square feet. It was originally proposed as a "small day spa."
  - b. The 2018 Modifications specified that:
    - i. "A 1,620 s/f addition on the south side of the building will be constructed to house a spa (a spa was approved in 2008 for the Penniman Cottage, which will not be built)."
    - ii. "The spa will be relocated from the Penniman Cottage to the Main Hotel building."
  - c. The specifications for the 2020 Proposed Modifications include:
    - i. 4,625 square feet.
    - ii. Two-story spa (first floor and basement).
    - iii. Offset from the main hotel building.
    - iv. The basement will house six treatment rooms; the first floor will include a salon, nail parlor, women and men's relaxation rooms with steam showers, showers, and locker rooms, another treatment room, and a walled garden outside.
  - d. This increase in scale is a major change to what was originally approved in 2008. As a result, it raises a number of concerns outlined below.
2. **Increase in Intensity of Use:** The proposal is a significant change that should be referred to the full Commission because, due to its expanded size, the spa will increase intensity of use.
  - a. The spa is replacing four guest rooms, dramatically increasing pedestrian traffic and the number of persons going through the building on a daily basis.
  - b. 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.
3. **Impact to Abutters:** The proposal is a significant change that should be referred to the full Commission because the impact to abutters is considerable, and greater than what was originally approved in 2008.

a. The spa will result in an increase in noise, particularly due to the garden space and water feature.

4. **Changes the Character of the Neighborhood**: The proposal is a significant change (that warrants a public hearing) because the addition of an independent spa will exacerbate the Hotel's impact on the neighborhood.

a. The spa is another expansion of the hotel's increasing commercialization of this neighborhood, which is residential in nature.

b. The Hotel has not specified whether the spa will be open to the public or remain open only to hotel guests.

i. Assuming the spa is open to the public, traffic and parking needs will increase.

ii. The original 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.

c. The addition of a separate spa would be one of many new commercial activities at the Harbor View Hotel – including major expansion and re-location of the outdoor bar, rental of 119 N. Water Street as an extension of the hotel, and use of the dock at 119 N. Water Street to offer private yacht charters and jet ski rentals to hotel guests. Many these activities have not received MVC approval. See Section II.3 below for more details.

**Comment No. 2: The 2020 Proposed Modifications should be referred to the full Commission because the modifications qualify as a "Development" under the DRI regulations.**

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 should be referred to the full Commission because the Bradley Cottage will change from its use as guest rooms to a spa.
  - a. 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.
2. **Demolition of Bradley Cottage**: The proposal is a significant change that should be referred to the full Commission because the 2020 Proposed Modifications require complete demolition of Bradley Cottage.
  - a. The 2020 Proposed Modifications do not fall under the exception in 1.2(b) because the Hotel is not in conformance with the 2008 MVC decision.
3. **Unapproved Modifications; Modifications Not in Conformance with DRI # 614**: A number of modifications to the hotel have been made without MVC approval, such that the existing hotel as constructed is not in conformance with DRI #614 as approved.
  - a. Modifications are required for development or 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.*” DRI Checklist 1.2, page 5.
  - b. Therefore, because the MVC has previously approved the Hotel’s DRI application in 2008, any modifications which are a development or substantial change is required to undergo MVC approval.
  - c. The Hotel has made a number of modifications and has not sought MVC approval:
    - i. **Outside Bar**: The pool bar has changed location and increased intensity of use without MVC 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.”
      1. The new bar has been built outside the pool area, in a landscaped garden, in apparent violation of the 1992 Special Permit, which permitted the Hotel to serve food and alcoholic beverages in the pool area – not the adjacent lawn.
      2. In addition to a sizeable bar itself, couches, tables with umbrellas, and firepits have expanded the bar’s footprint. The new bar serves food and alcoholic beverages, essentially operating as an outdoor restaurant.
      3. The 2018 modification application does not discuss any changes to the bar.
      4. The changes to the bar is currently the subject of ongoing litigation between the Hotel and abutters.

- ii. 119 N. Water Street: 119 N. Water Street is the location of two major unpermitted commercial expansions of the Hotel.
  - 1. The Hotel has been using 119 North Water Street as a short term rental property and *de facto* adjunct to the hotel without MVC or ZBA approval.
  - 2. 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.
  
- iii. Horse and Buggy Rides: The Hotel has offered horse and buggy rides this fall throughout the neighborhood, raising noise and traffic concerns.

In light of the concerns outlined above, the abutters of Harbor View Hotel request that the 2020 Proposed Modifications be referred to the full Commission, and given a hearing. They are a substantial change and/or development to DRI #614.

Thank you for your attention to this matter,

Dylan Sanders  
617-549-5828

Alessandra Wingerter  
716-380-8314  
[wingerter@sugarmanrogers.com](mailto:wingerter@sugarmanrogers.com)



**Sugarman, Rogers, Barshak & Cohen, P.C.**  
101 Merrimac Street, Suite #900 | Boston, MA 02114  
617.227.3030 | 617.523.4001 fax  
<http://www.sugarmanrogers.com>  
Connect with us on: [LinkedIn](#) | [Twitter](#)

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