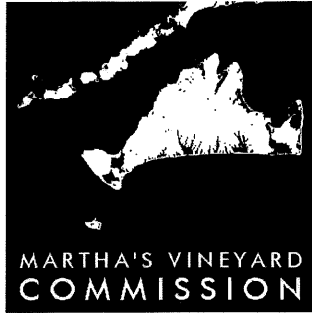




2022 00005307

Bk: 1634 Pg: 179 Doc: DECIS
Page: 1 of 11 08/22/2022 09:18 AM



P.O. BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557 • 508.693.3453
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG

Decision of the Martha's Vineyard Commission

DRI 670-M2 Lampost Workforce Housing Modification

1. SUMMARY

Referring Board: Self-referred

Subject: Development of Regional Impact #670-M2 Lampost Workforce Housing Modification

Project: Modification to the housing conditions for DRI 670-M to reduce the number of units restricted to workforce housing from 10 to 4.

Owner: Windsor Circuit Ltd (Adam Cummings)

Applicant: Windsor Circuit Ltd (Adam Cummings); Jonathan Holter, Agent

Applicant Address: Adam Cummings Jonathan Holter
P.O. Box 4873 P.O. Box 1104
Vineyard Haven, MA 02568 Vineyard Haven, MA 02568

Deed: Recorded Land: Book 429, Page 690

Previous Decisions: Book 1429, Page 916 - DRI 670 Decision 2017
Book 1476, Page 88 - DRI 670-M Modification Decision 2018

Project Location: 6 Circuit Ave. (Map 9, Lot 22), Oak Bluffs (0.15 acres)

Decision: The Martha's Vineyard Commission (the Commission) denied the application for the project as a Development of Regional Impact at a vote of the Commission on May 5, 2022.

Written Decision: This written decision was approved by a vote of the Commission on June 9, 2022.

2. FACTS

The exhibits listed below including the referral, the application, the notice of the public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on January 5, 2022 by the Applicant for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act), and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, DRI Checklist Item 1.3D *Modification to a Previous Development of Regional Impact*. On February 11, 2022, the Applicants opted to forego the modification review process, and go directly to a public hearing review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on March 3, 2022; notice was also published in the Vineyard Gazette on March 4, 2022. This notice was cancelled after one week to include language regarding compliance with the existing DRI conditions.

A revised notice of the hearing on the Application for modification, as well as a finding on the compliance/non-compliance with the housing conditions in DRI 670-M, was published in the MV Times on March 17, March 24, and March 31, 2022. The notice was also published in the Vineyard Gazette on March 18, March 25 and April 3, 2022. Abutters within 300 feet of the property were notified by mail on March 15, 2022.

Hearings: The Commission originally scheduled a public hearing on the Application pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on March 17, 2022. The hearing was rescheduled to April 7, 2022, and was closed that same night with the exception of the written record which was left open until 5:00 pm on April 21, 2022 and closed at that time. The hearing was held entirely using remote conference technology as allowable under Chapter 20 of the Acts of 2021.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P1. "As Built Plans" prepared for The Oyster Bar, 6 Circuit Avenue Oak Bluffs, MA by Sullivan and Associates Architects, consisting of five (5) 36" x 24" pages, scale $\frac{1}{4}$ " = 1'-0", including: A-01 First Floor Plan, dated February 6, 2019; A-03 Second Floor Plan, dated December 21, 2018; A-04 Third Floor Plan, dated December 21, 2018; A-05 Fourth Floor

Plan, dated December 21, 2018; and E-01 First Floor Electrical Plan, dated January 18, 2019.

2.4 Previous Plans

- PP1. Application Package for DRI 670 Lampost Apartments 6 Circuit Avenue, Oak Bluffs, MA prepared by Maurice O'Connor Architect, consisting of fifteen (15) 17" x 11" pages scaled to 1/4" = 1'-0", and dated October 7, 2016 unless otherwise noted, including: cover page, 0-Ground Floor Plan; 1-First Floor Plan; 2-Second Floor Plan; 3-Third Floor Plan; 4-Fourth Floor Plan; 5-West Exterior Elevation, scale 1/8" = 1'-0"; 6-North Exterior Elevation, scale 1/8" = 1'-0"; 7-East Exterior Elevation, scale 1/8" = 1'-0"; 8-South Exterior Elevation, scale 1/8" = 1'-0"; A0 Existing Ground Floor Plan, dated September 7, 2016; A1 Existing First Floor, dated September 7, 2016; A2 Second Floor Plan, dated September 7, 2016; A3 Third Floor Plan, dated September 7, 2016; A4 Existing Exterior Elevations, dated September 7, 2016.
- PP2. DRI 670 Lampost Conversion Project Narrative, consisting of one (1) page, dated November 7, 2016.
- PP3. DRI 670 - Lampost Conversion Offers, consisting of one (1) page, dated December 8, 2016.
- PP4. Application Package for DRI 670-M Lampost 6 Circuit Avenue, Oak Bluffs, MA prepared by Sullivan and Associates Architects, consisting of eleven (11) 36" x 24" pages scaled to 1/4" = 1'-0", dated June 13, 2018, including: cover page, A-01 Lower Level Plan; A-02 First Floor Plan; A-03 Second Floor Plan; A-04 Third Floor Plan; A-05 Fourth Floor Plan; A-06 West Elevation; A-07 North Elevation; A-08 East Elevation; A-09 South Elevation; and A-10 Street Views, no scale.
- PP5. Email from Geoghan Coogan to Paul Foley (MVC) DRI 670-M Applicant Narrative, consisting of one (1) page, dated June 4, 2018.

2.5 Other Exhibits

- E1. DRI 670 - Lampost Conversion MVC Decision, consisting of ten (10) pages, dated January 19, 2017, and recorded at the Registry of Deeds Book 1429, Page 916.
- E2. DRI 670-M Lampost Workforce Housing Conversion Modification MVC Decision, consisting of seven (7) pages, dated August 23, 2018, and recorded at the Registry of Deeds Book 1476, Page 88.
- E3. Letter to Ewell Hopkins, Chair of Oak Bluffs Planning Board, from Paul Foley, MVC DRI Coordinator, regarding the approval of DRI 670-M, consisting of one (1) page, dated August 23, 2018.

- E4. Decision of the Oak Bluffs Planning Board, The Lampost Special Permit and Site Plan Review Application, consisting of nine (9) pages, dated September 6, 2018.
- E5. Letter from Alex Elvin to Adam Cummings regarding the use of the two top-floor apartments, consisting of two (2) pages, dated August 10, 2021.
- E6. Emails between Geoghan Coogan, Adam Cummings, Adam Turner, Alex Elvin, and Ewell Hopkins, regarding compliance, consisting of three (3) pages, dated between August 10 and September 20, 2021.
- E7. Emails between Alex Elvin, Matt Rossi, Ewell Hopkins, and Geoghan Coogan regarding compliance with DRI 670-M conditions, consisting of six (6) pages, dated between August 10 and September 28, 2021.
- E8. Letter from Doug Sederholm, Chair of the MVC Compliance Committee, to Adam Cummings regarding the continued violations of the MVC Conditions for DRI 670 and DRI 670-M, consisting of one (1) page, dated December 7, 2021.
- E9. Emails between Alex Elvin, Geoghan Coogan, and Doug Sederholm, regarding past violations of DRI 670-M consisting of three (3) pages, dated December 7 and 8, 2021.
- E10. Emails between Jonathan Holter and Alex Elvin, regarding clarifying information for the modification request, consisting of six (6) pages dated January 11 to January 26, 2022.
- E11. Modification Request for DRI 670 Lampost Conversion 2022 Proposed Modification, consisting of two (2) pages, received January 5, 2022, and revised on January 20, 2022.
- E12. Emails between Jonathan Holter and Alex Elvin with answers to MVC questions, consisting of five (5) pages, dated January 19 to March 7, 2022.
- E13. Letter from the Oak Bluffs Planning Board to Adam Turner regarding compliance and procedures of DRI 670-M, consisting of one (1) page, dated January 24, 2022.
- E14. Apartment Usage Summary, prepared by Alex Elvin based on information provided by the Applicant, consisting of one (1) page, dated January 26, 2022.
- E15. Letter from Adam Turner to the Oak Bluffs Planning Board in response to the January 24 letter (Exhibit 13), consisting of one (1) page, dated February 7, 2022.
- E16. Letter from the Oak Bluffs Affordable Housing Committee to the Oak Bluffs Select Board, recommending that the Select Board encourage the MVC not to modify DRI 670-M, consisting of one (1) page, dated February 22, 2022.
- E17. Staff Presentation to the Land Use Planning Committee for DRI 670-M2 Lampost Workforce Housing Modification Pre-Public Hearing, consisting of seventeen (17) pages, dated February 28, 2021.

- E18. Letter from the Oak Bluffs Planning Board in support of the February 22 letter from the Oak Bluffs Affordable Housing Committee (Exhibit 16), consisting of one (1) page, dated March 1, 2022.
- E19. Email from Jonathan Holter to Alex Elvin regarding compliance with DRI 670 and 670-M, consisting of one (1) page, dated March 8, 2022.
- E20. Letter from Adam Turner to Jonathan Holter regarding MVC Compliance process, consisting of one (1) page, dated March 15, 2022.
- E21. Staff Report for DRI 670-M2 Lampost Workforce Housing Modification, consisting of three (3) pages, dated March 29, 2022 and updated to be four (4) pages on April 6, 2022.
- E22. Letter from the Oak Bluffs Affordable Housing Committee in opposition to the proposed modification, consisting of two (2) pages, dated April 6, 2022.
- E23. Staff Presentation to the full Commission for DRI 670-M2 Lampost Workforce Housing Modification Public Hearing, consisting of twenty-two (22) pages, dated April 7, 2022; and revised to consist of twenty-four (24) pages on May 5, 2022.
- E24. Memorandum of Applicant in Support of Proposed Modification, prepared by Jonathan Holter, Esq. and Peter A. Brown, Esq., consisting of thirty-four (34) pages, received April 7, 2022.
- E25. Staff Presentation for DRI 670-M2 Lampost Workforce Housing Modification Deliberation and Decision, consisting of twenty-four (24) pages, dated May 5, 2022.
- E26. Notes from the Land Use Planning Committee meeting of November 7, 2016, consisting of three (3) pages.
- E27. Minutes of the MVC meeting of December 1, 2016, Lampost Conversion DRI 670 Public Hearing, consisting of fourteen (14) pages.
- E28. Notes from the Land Use Planning Committee meeting of December 12, 2016, consisting of four (4) pages.
- E29. Minutes of the MVC meeting of December 15, 2016, Lampost Conversion DRI 670 Deliberation and Decision, consisting of fourteen (14) pages.
- E30. Minutes of the MVC meeting of January 19, 2017, Lampost Conversion DRI 670 Written Decision, consisting of seven (7) pages.
- E31. Notes from the Land Use Planning Committee meeting of June 4, 2018, consisting of two (2) pages.

- E32. Minutes of the MVC meeting of June 14, 2018, DRI 670-M Lampost Modification Review, consisting of eleven (11) pages.
- E33. Minutes of the MVC meeting of August 23, 2018, DRI 670-M Written Decision for Modification, consisting of thirteen (13) pages.
- E34. Minutes of the Commission’s Land Use Planning Committee’s Pre-Public Hearing Review for DRI 670-M2, February 28, 2022.
- E35. Minutes of the Commission’s Public Hearing for DRI 670-M2, April 7, 2022.
- E36. Minutes of the Commission’s Land Use Planning Committee’s Post-Public Hearing Review for DRI 670-M2, May 2, 2022.
- E37. Minutes of the Commission’s Deliberation & Decision for DRI 670-M2, May 5, 2022.
- E38. Minutes of the Commission’s Approval of the Written Decision for DRI 670-M2, June 9, 2022.

2.6 Summary of Testimony

The following gave testimony during the public hearing on April 7, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Jonathan Holter, Applicant.
- Oral testimony from Public Officials speaking on behalf of their Boards:
 - Mark Leonard, Oak Bluffs Affordable Housing Committee Chair, spoke in opposition to the proposal.
 - Ewell Hopkins, Oak Bluffs Planning Board Chair, spoke in opposition to the proposal, and emphasized compliance.
 - Mark Crossland, Oak Bluffs Affordable Housing Committee, spoke in opposition to the proposal.
- Oral testimony from the Public:
 - Jeffrey DuBard, West Tisbury Affordable Housing Committee and Island Housing Trust Director, spoke in opposition to the proposal.
 - Richard Toole, Oak Bluffs resident, spoke in opposition to the proposal.

3. FINDINGS

3.1 Project History

The MVC approved DRI 670 in 2017, as a workforce housing development project allowing for the top three floors of the building at 6 Circuit Ave. to be converted from a dance club, bar, and storage facility in two phases. Phase one included moving the entrance to the sports bar below and converting the third floor to 14 employee bedrooms with shared bathrooms, kitchen, and living area. Phase two included converting the fourth floor to an additional seven employee bedrooms with shared bathrooms, kitchen, and living area, and converting the fifth floor to a four-bedroom apartment for workforce housing. All bedrooms were to be double occupancy.

Following the adoption of Oak Bluffs Bylaw Section 7.2 pertaining to the conversion of existing buildings to mixed-use, DRI 670 was modified in 2018 (DRI 670-M) to allow for 10 apartments in the top three floors of the building, rather than the mix of apartments and dormitory bedrooms. The modification also increased the square footage by 1,500 ft², reduced the total number of bedrooms from 24 to 22, increased the number of bathrooms from five to 10, and increased the number of kitchens from three to 10. The modification was approved with additional conditions related to the workforce housing.

3.2 Project Description

The request for modification stated that there is a disagreement between the Applicant and MVC over the phrase “as needed” in condition 1.1. The request is to modify the current housing conditions for DRI 670-M as follows (changes in bold):

- 1.1 *As offered by the Applicant, ~~the units four (4) units with a total of nine (9) bedrooms~~ shall be rented to employees of local businesses either as permanent year-round housing or temporary housing **as needed**.*
- 1.2 *The rental workforce housing shall be for members of the seasonal or year-round workforce.*
- 1.3 *The Applicant shall provide the MVC with yearly rental documentation proving that the residential units are utilized by Island employees, **no later than December 31st of each year**.*
- 1.4 *The building shall be heated so that year-round workforce housing can be provided to workers.*

Units 1-4 as shown in the as-built plans would be restricted as workforce housing.

3.3 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is 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.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluation the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all testimony presented and reviewing all documents submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 of the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE BENEFITS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTIONS 14 AND 15 OF THE ACT.

A1. The Commission finds that the proposed development at this location is not appropriate or essential in view of the available alternatives (Section 15(a) of the Act.)

With respect to impacts upon persons and property (Section 15(c) of the Act) and the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds the project would have a detrimental impact. The Commission finds that potential impacts related to the environment (Section 15(b) of the Act), the provision of municipal services or burden on taxpayers (Section 15(e) of the Act), existing public facilities (Section 15 (f) of the Act), and local planning objectives (Sections 14(b), 15(g), and 15(h) of the Act) do not apply to the project.

A2. The Commission finds that potential impacts upon the environment relative to other alternatives (Section 15(b) of the Act) do not apply to the project.

A3. The Commission finds that the proposed development would have a detrimental effect upon other persons and property (Section 15(c) of the Act).

With respect to Economic Development, the Commission notes the following:

- The proposed modification would create further opportunities for short-term lodging in Oak Bluffs, which could in turn support the local tourism industry. However, the proposal would also eliminate units from the local workforce housing stock, with potential negative impacts on Island businesses and workers.
- There are currently about 900 short-term rentals in Oak Bluffs, according to the short-term rental compliance company Hamari; and 15 traditional lodging establishments with a total of 336 rooms, according to the town.
- No evidence was provided to indicate a need for additional Airbnb or short-term lodging units on the Island.
- The Commission acknowledges the need for additional rental housing to accommodate the Island workforce.
- The presence of workforce units provides economic benefits to the town, so the reduction of workforce units would have a negative effect.

A4. In regard to the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds the project would have a detrimental impact. The Commission also notes the following:

- The project as originally proposed and modified was for the conversion of existing commercial space into workforce housing. The MVC noted in its decision for DRI 670 that the proposal was a benefit in terms providing housing that could be used by the Applicant's employees and those of other Island businesses.
- The proposed modification would reduce the number of required workforce units from 10 to four, and the number of associated bedrooms from 22 to nine (about a 60% reduction in both cases).
- The six non-workforce units would most likely be used as short-term rentals.

A5. The Commission finds that potential impacts related to the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act) do not apply to the project.

A6. The Commission finds that potential impacts related to existing public facilities or those that are to be developed within the succeeding five years (Section 15 (f) of the Act) do not apply to the project.

A7. The Commission finds that potential impacts related to the ability of the municipality to achieve the objectives set forth in the municipal general plan, and land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), do not apply to the project.

A8 The Commission finds that the proposed development is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

The project would be allowable by modification of an existing Special Permit.

B. THE COMMISSION MAKES NO FINDING IN REGARD TO WHETHER THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The project would be allowable by modification of an existing Special Permit.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FOR IN SECTION 14(d) OF THE ACT.

The project site is not within any District of Critical Planning Concern.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions and offers, the Commission has concluded that the probable detriments of this proposed development in this location exceed its probable benefits in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on May 5, 2022, and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations, participated in the decision on May 5, 2022:

Voting to deny the project: Jeff Agnoli, Trip Barnes, Christina Brown, Jay Grossman, Fred Hancock, Michael Kim, Joan Malkin, Greg Martino, Kathy Newman, Kate Putnam, Ben Robinson, Doug Sederholm, Linda Sibley, Ernie Thomas, Christine Todd, Jim Vercruysse.

Voting against the motion: None

Abstentions: Brian Smith

Recused: None

Based on this vote, the Commission denied the application for modification. The Commission further clarified that as currently approved and conditioned, the housing units shall be rented for occupancy by employees of local businesses and no one else, as conditioned in the decision for DRI 670-M.

This Written Decision is consistent with the vote of the Commission on May 5, 2022 and was approved by a vote of the Commission on June 9, 2022.

5. CONDITIONS

After reviewing the proposal for this modification, the Commission imposes no new conditions. All previous conditions for the project remain in effect.

6. CONCLUSION

6.1 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Oak Bluffs Town Clerk.

6.2 Signature Block

JM
Joan Malkin, Chair

16 Aug 2022
Date

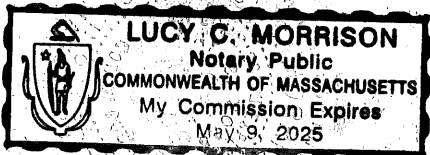
6.3 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 16th day of August, 2022, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

Lucy C. Morrison
Signature of Notary Public



Lucy C. Morrison
Printed Name of Notary
My Commission Expires May 9, 2025

6.4 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on:

August 22, 2022

Deed: Book 1634, Page 179

Document Number: 5307

ATTEST: Paulo C. DeOliveira, Register
Dukes County Registry of Deeds