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Martha's Vineyard Commission

DRI 674 Stone Bank Development

Staff Report – 2023-10-11

1. DESCRIPTION

1.1 Owner:

1.2 Applicant: Dunn Family, LLC doing business as Dunn MV Investments

1.3 Applicant's Primary Agent: Red "Sam" Dunn

1.4 Applicant's Agent: Patrick Lyons

1.5 Applicant's Business Entity Agent: Attorney Robert McCarron

1.6 Project Location: 75 Main Street + 2, 8, 16, 20, 24, 26, and 30 Union Court

1.7 Proposal: Multiple modifications to an existing DRI

1.8 Zoning: B1 District, small portion Waterfront District

1.9 Local Permits/Reviews: Tisbury Conservation Commission, Tisbury Board of Health, Tisbury Building Department (see 1.7), Tisbury Fire Department, Tisbury Planning Board, Tisbury Select Board, Tisbury Wastewater Department, Tisbury Zoning Board of Appeals

1.10 State Permits/Reviews: Architectural Access Board, Steamship Authority

1.11 Surrounding Land Uses: To the South, the development site fronts Union Street and abuts commercial property occupied by a restaurant, an ice cream shop, and a bicycle shop. Also to the South, the development site abuts a Town of Tisbury parking lot and a Steamship-Authority-owned roundabout, beyond which is the Steamship Authority's Vineyard Haven Terminal. To the East, the development site fronts Vineyard Haven Harbor. To the North, the development site fronts a 10-foot-wide private way and abuts a private residence, and a multi-unit private residence. To the West, the development site fronts Main Street and abuts commercial property occupied by a sport and clothing shop and by a pharmacy, among other businesses.

1.12 Project History: This development has come before the Commission through DRI 674 Santander Historic Roof Tiles, DRI 674 M Old Stone Bank Condos, DRI 674 M2 Old Stone Bank Condos Modification of Decision, DRI 674 M3 Stone Bank Restaurant, DRI 674 M4 Stone Bank Condos Modifications, and to date DRI 674 M5 Stone Bank Development; Partial Determinations I, II, III and IV.

1.13 Temporary Occupancy Permits: After consultation with the Commission, Tisbury's Building Department issued Temporary Occupancy Permits (90-day) on May 31, 2023 for units in Building A (16 Union Court portion), Building B (20 Union Court), and Building F (2 Union Court). In a May 25, 2023 letter to the Tisbury Building Department, the Commission requested that the Department refrain from granting anymore occupancy permits until such time as unfinished business, such as unapproved modifications and possible compliance issues, is addressed and until such time as the Commission has received a complete set of as-build plans. At the end of August, 2023, the Tisbury Building Department issued a temporary occupancy permit for Building D-1/26 Union Court.

- 1.14 Building Plans:** The veracity and consistency of various plans submitted as part of this project have come into question following staff reviews. Some of these plans may fall short of statutory requirements regarding architects and architectural plans.
- 1.15 Elevation Plans (History & Status):** Preliminary elevation plans first came as part of DRI 674 M Old Stone Bank Condos and were posted September 9, 2020. It's not immediately clear who generated these plans. The elevations in the plans depart significantly from the most recent elevation plans on file. A revised, yet still preliminary, set of elevation plans was subsequently posted on October 30, 2020. Another revised, yet preliminary, set of elevation plans was posted November 24, 2020. The first set of DRI 674 M Old Stone Bank Condos elevation plans received by the Commission that that largely resemble what has been erected today were posted on February 8, 2021. These plans were executed by Elise Elliston, an associate designer. The plans consist of Southern and Eastern views of Buildings A/75 Main Street and Southern Views of 16 Union Court as well as Building B/ 20 Union Court. The plans also consist of Northern and Eastern views of Building C/24 Union Court. The plans also consist of views from all for all four compass point views for Buildings D-1/26 Union Court and D-2/30 Union Court. The plans further contain Southern and Eastern views of Buildings E/8 Union Court and F/2 Union Court. Revised elevations were posted for Building B/20 Union Court on March 8, 2021. On April 21, 2021, elevation plans largely similar to those posted on February 8, 2021 but with dimensions and lighting locations added, were posted. As part of DRI 674 M4 Stone Bank Condos Modifications, a set of elevation plans provided to the Tisbury Building Department were posted on September 17, 2021. These elevations were also executed by Elise Elliston. These elevations include a Southern view, and Eastern View and an abridged Northern view of Building A/75 Main Street/16 Union Court and Southern, Northern, and Eastern views of Building B/ 20 Union Court (these include second floor decks on the Northern side of the building). The plans also include Northern and Eastern views of Building C/24 Union Court. The plans further contain views from all four compass points for Buildings D-1/26 Union Court and D-2/30 Union Court. The plans contain Southern, Northern, and Eastern views of Buildings E/8 Union Court and also Southern, Northern, and Eastern views of Building F/2 Union Court. Also as part of DRI 674 M4 Stone Bank Condos Modifications a Northern elevation view of Building B/20 Union Court was posted on September 15, 2021. On November 15, 2021, as part of DRI 674 M3 Stone Bank Restaurant, "proposed" Southern and Western elevations for Building C/24 Union Court were posted. The elevations reflect the elimination of an upper story addition. A "Revised Narrative and Application Materials," posted April 25, 2022, also contains Southern and Western elevations for Building C/24 Union as well as an Eastern View of Building E/8 Union Court. A balcony on this building—on the Eastern exterior—was later modified as part of DRI 674 M3 Stone Bank Restaurant. As part of DRI 674 M3 Stone Bank Restaurant a "fencing plan" posted January 13, 2023 gives a Southern View of Building D-2/30 Union Court and shows cedar trelliswork affixed to the Southern façade (see herein Modification X), plank fencing, a retaining wall, and a vehicular gate. The dimensions of these items aren't given. Also shown are two bus shelters (see herein 3.2 Traffic and Transportation). Posted on January 23, 2023, as part of DRI 674 M3 Stone Bank Restaurant, were elevations labeled "Overall Site Plan and Elevations 23-1-23 CORRECTED". These contain alterations to windows, doors, railings, and chimneys and are executed by Elise Elliston. They show a partial Southern View of Building A/75 Main Street/16 Union Court. They show Southern, Northern, and Eastern views of Building B/20 Union Court. They show views from all four compass points for Buildings D-1/26 Union Court and D-2/30 Union Court. Concerning the Southern side of

Building D-2/30 Union Court, trelliswork plank fencing, the retaining wall, and the vehicular gate are included in the view. Unlike the other elevation views in the set, this particular view is drawn by Applicant's Agent Sam "Reid" Dunn. The word Azek appears next to trelliswork atop what appears to be whiteout. All but the Western side of Building E/8 Union Court is shown. All but the Western View of Building F/2 Union Court is shown. To date, the Commission has received no Western elevation views for Building B/20 Union Court, Building E/8 Union Court, and Building F/2 Union Court. To date, the Commission has not received a complete or master set of dimensionally accurate, stamped, elevation plans. In emails sent March 2, 2023 and again April 3, 2023, Commission staff informed the Applicant, via the Applicant's Agent, that the current application for modification(s) that ultimately would represent DRI 674 M5 Stone Bank Development wouldn't be complete until such time as the Commission received a complete set of dimensionally accurate and stamped elevation plans. The Applicant's Agent argued against this prerequisite. Ultimately, for the limited purposes of bringing material forward to the LUPC, the Commission **temporarily** waived a complete set of dimensionally accurate, stamped elevation plans in lieu of stamped and enhanced Southern elevations for Buildings D-1/26 Union Court and D-2/30 Union Court submitted as dimensionally accurate, after a bit of back and forth. These were emailed to the Commission on May 18, 2023. The view of Building D-1/26 Union Court shows the placement of proposed solar panels. The view of Building D-2/30 Union Court largely reflects the Southern elevation posted January 23, 2023. Additions include wirework attached to the plank fencing and a more clearly written description of trelliswork being composed of Azek. The Applicant must still hand in a complete set of dimensionally accurate, stamped elevation plans part and parcel with a thorough set of as-built plans prior to the issuance of a certificate or certificates of completion (see herein 1.7 Temporary Occupancy Permits).

1.16 Solar Plan:

- Regarding a Solar Panel Plan Condition 5.1 of the DRI 674 M decision states: "Subject to Tisbury Historic Commission approval [deemed legally infeasible], solar panels shall be installed on the south-facing roofs of buildings Band D1. Plans showing the final location and capacity of the solar panels shall be submitted to the LUPC for approval prior to receipt of a Building Permit." Further regarding this plan, a June 29, 2022 Commission letter relative to DRI 674 M4 states in part: "[T]he original request had been to not install any solar panels, but the request was revised after the LUPC meeting on May 10, 2022, at which commissioners suggested including solar panels on Building D1. The LUPC voted to recommend approval of the modifications subject to more information, including a diagram showing the full extent of the proposed solar panels prior to the meeting with the [F]ull Commission. After continued discussion at the MVC meeting on June 23, the applicant withdrew the revised proposal and offered to return with a proposal for additional solar panels onsite. As such, Condition 5.1 requiring approval of the location and capacity of the solar panels prior to receipt of a Building Permit has not yet been satisfied." The LUPC chair felt on June 12, 2023 that the Solar Plan should be addressed by the Full Commission. On June 22, 2023 the Commission voted to approve solar panels on the roof of Building D-1/26 Union Court without holding a hearing.

1.17 Building & Unit Summaries:

- Building A/75 Main Street & 16 Union Court: This compound building includes the historic bank building (see DRI 674) and a newly construction addition. The Main Street level of the building, which last operated as a branch of Santander Bank, is vacant. As of June 8, 2023, the

Applicant has applied to Tisbury's Wastewater Department for flow to support an 85-seat restaurant in this vacant bank space. The cellar of the bank building has been divided into two units: 16 Union Court A, which is occupied by a retail business, "Cornado," and 16 Union Court Unit B, a space slated for a sound studio. Both these units received a 90-day Occupancy Permit on May 31, 2023. An addition to the bank building is comprised of a 2nd Floor residence (16 Union Court Unit D) and a ground floor commercial/office space (16 Union Court Unit C). Both these units received a 90-day Occupancy Permit on May 31, 2023. The roof of the bank building clad with clay tile. The exterior walls are composed of random rubble that has been rounded by glacial or oceanic forces. The Southern exterior of the addition is clad in what the Applicant described as cement clapboards painted a "putty color". The Applicant described the specific type of paint as a "mystery". The Eastern and Northern exterior walls are clad in cedar shakes.

- Building B/20 Union Court: This three-floor mixed-use building is comprised of two ground floor commercial/office spaces (Units A & B) and two upper story residences (Units C & D) each with bedrooms on the second and third floors. All units in this building received a 90-day occupancy permits on May 31, 2023. The Applicant occupies both of the residences. The building is roofed with apparent cedar shingles. The Southern exterior is clad in Benjamin Moore "Beau Green" painted cement clapboards. The Northern, Western, and Eastern exterior walls are clad in cedar shakes. The two residential units have been unified, thus eliminating one residential unit from the development. The building has an unapproved exterior staircase and an unapproved skylight.
- Building C/24 Union Court: Previously this building was used for drive through banking. The carport remains and is being incorporated into a seating area for a 70-seat outdoor restaurant that will operate its kitchen out of Building E/8 Union Court (see DRI 674 M3). The building is presently occupied by the Mone Insurance Agency. A prior plan to add to the height of the building was eliminated (see DRI 674 M4). The South-facing teller window under the carport is the proposed location of an aquarium/fish tank that would serve as a decorative backdrop to the restaurant. This proposed feature was set aside for review by the Commission. No plan has been approved for it yet. According to the Applicant, another business may operate out of the rear (Western end) of the building. The roof is clad in clay tiles. The exterior walls are made of random rubble rounded by glacial or oceanic forces.
- Building D-1/26 Union Court: This is a standalone, elevated dwelling. The second and third floors comprise the living areas. At ground level is a North-South-oriented carport built into the foundation. This building is expected to receive solar panels on its Southern roof line. Where the solar panels will go the roof is clad with asphalt shingles, an apparent unapproved modification. Elsewhere on the roof cedar shingles are used. The Southern and Western exterior walls are clad in Benjamin Moore "Bryant Gold" painted cement clapboards. The Northern and Eastern exterior walls are clad in cedar shingles. The foundation is clad in wooden trelliswork.
- Building D-2/30 Union Court: This is a standalone, elevated dwelling. The second and third floors comprise the living areas. At ground level is a West-East-oriented carport built into the foundation. A retaining wall/planter is built against the Southern portion of the foundation atop this a wooden, wire clad, fence has been erected. The fence hasn't been approved and the retaining wall might not have been approved. If approved, it may have only been partially approved. The Southern side of the foundation is a solid slab while the Northern portion is

comprised of pillars. The building is roofed with cedar shingles. The Eastern and Southern exterior walls are clad in Benjamin Moore “Mediterranean Olive” painted cement clapboards. Synthetic trellis work is mounted in the Southern exterior. Prior plans depicted this as cedar trelliswork. The Northern and Western exterior walls are clad in cedar shakes.

- Building E/8 Union Court: This is a standalone, mixed-use building. The ground floor is being prepared to serve as a restaurant kitchen (see 674 M3). The second floor is residential. The residence has an unapproved skylight. The roof is clad with cedar shingles. The exterior walls are all clad in Benjamin Moore “Grand Canyon Red” painted cement clapboards accented with white colored trim boards.
- Building F/2 Union Court: This is a three-floor, standalone mixed-use building. The ground floor is occupied by Sea Bags (see CR 1-2023). The ground floor unit received a 90-day Occupancy Permit on May 31, 2023. The second floor is designated as an affordable ownership apartment (see DRI 674 M & DRI 674 M2). The third floor is a residence. Part of this building is being prepared for the installation of an elevator. The Western exterior wall is devoid of windows—an unapproved modification. The roof is clad in cedar shingles. The Southern, Eastern, and Western exterior walls are clad in Benjamin Moore “Mediterranean Olive” painted cement clapboards accented with white colored trim boards. An upper section of the Western exterior is a lighter, olive hue. The Applicant stated this is because it has yet to be painted. The Northern exterior wall is clad in cedar shakes.

1.18 Modification Summaries:

- Modification (1) **Wood-Framed Wire Fencing:** Despite written warnings not to erect fencing prior to Commission Approval, the Applicant has erected a span of wood-framed wire fencing between Building A/16 Union Court and Building C/24 Union Court. The fencing divides access to multiple units in Building A/16 Union Court and all of Building B/20 Union Court from the public pocket park and from the public walkway. A single wooden gate is set into the fence. The fence style appears on a plan of architectural elements dated September 15, 2021. The gate doesn’t appear on that plan. The Applicant has expressed a desire to line either side of this fence with shrubbery. Some Japanese cedars have already been installed. The placement of the fence appears on a site plan dated May 3, 2023. The plan hasn’t been reviewed or approved by the Commission. Placement of the fence has never been approved. The Commission voted to approve all of this fencing on June 22, 2023.
- Modification (2) **Wooden Plank Fences:** Despite written warnings not to erect fencing prior to Commission approval, the Applicant has erected wooden plank fences in multiple locations including adjacent to Buildings A/16 Union Court, C/24 Union Court, and F/2 Union Court. The Commission doesn’t appear to have authorized or approved this fencing. The Commission voted to approve all of this fencing on June 22, 2023.
- Modification (3) **Wire-clad Wooden Plank Fence:** Despite written warnings not to erect fencing prior to Commission approval, the Applicant has erected wire-clad wooden plank fence atop a timber retaining wall in front of Building D-2/30 Union Court. The fence directly abuts a Town of Tisbury parking lot. The Applicant has expressed a desire to send English Ivy creeping up the wire on the fence. It’s unclear if the wire on the fence is of appropriate grade and gauge for direct public exposure in a parking area where the potential exists for it to be bumped or snagged by vehicle mountings or loads such as cooler racks, bike racks, ladders etc.). It’s also

unclear how, if at all, ivy would affect the lifespan of a wooden fence. English ivy was stripped from brick on Harvard's and other Ivy League's academic buildings due to the damage it was found to cause. The LUPC reviewed this fencing on September 5, 2023 and voted to recommend acceptance of the modification, part and parcel with a retaining wall and a foundation. The Commission is set to review this fencing on September 7, 2023.

- **Modification (4) Retaining Wall/Planter Wall:** The Applicant has repaired, enlarged, and expanded a timber retaining wall directly in between Building D-2/30 Union Court and a Town of Tisbury parking lot. The full scope of work doesn't appear to have been approved by the Commission. Where the retaining wall runs in front of Building D-2/30 Union Court, the earth supported by the retaining wall backs up against the foundation of that building. In that section the retaining wall serves as an earthen foundation for a mahogany walkway. Elsewhere the retaining wall serves as an elongated planter. After a 10-foot break that the Applicant expects to build a gate in, the retaining wall continues Eastward toward VTA bus shelters. The retaining wall, in conjunction with the solid building foundation behind it, and the proposed gate, has created staff concern about the potential for unfavorable floodwater circulation. Staff recommends an independent study be conducted to determine what affect, if any, the wall, foundation, and gate may have on floodwater flow. A study conducted by the Woods Hole Group, that culminated in an August 25, 2023 report, found that the retaining wall (and foundation and fencing) would not significantly impact floodwater flow. The LUPC reviewed the retaining wall on September 5, 2023 and voted to recommend approval of it, along with associated fencing and a foundation. The Commission is set to review the retaining wall on September 7, 2023.
- **Modification (5): Building D-2/30 Union Court Non-Columnar Foundation:** This building is located in a flood zone. As such its inhabitable portions are on the second and third floors. The ground level of the building is comprised of an open foundation. The foundation is solid on its Southern side and pillared on its Northern side. A West-East-oriented carport built into the foundation. Earlier plans approved by the Commission show a pillared foundation on both the Northern and Southern sides of the building. As built, the foundation contributes to staff concerns about possible impactful floodwater flow (See (4). Retaining Wall/Planter Wall). The Commission tapped the Woods Hole Group to research the issue. In an August 25, 2023 report, the Woods Hole Group found that the foundation (and retaining wall and fencing) would not significantly impact floodwater flow. The LUPC reviewed the foundation on September 5, 2023 and voted to recommend approval of it, along with associated fencing and a retaining wall. On September 7, 2023 the Full Commission approved the foundation modification (and retaining wall and fencing) without a hearing.
- **Modification (6) Building B/20 Union Court Unification of Residential Units C & D:** Per September 15, 2021 floor plans (see DRI 674 M, DRI 674 M2, and DRI 674 M3), the second and third floors of Building B/20 Union Court were to be comprised of two residential units. However, during a May 25, 2023 staff visit to the building in the company of the Applicant, it was revealed the two units had been connected into one large double unit. Furthermore, the Applicant revealed (and the furnishings showed), that the Applicant had been living in the residence for an undisclosed period prior to the issuance of a temporary occupancy permit (Tisbury's Building Department, following a Zoom meeting with Commission staff, issued a 90-day temporary occupancy permit for this building and others throughout the development. This took effect

either May 26, 2023, May 29, 2023, or May 30, 2023). The Commission previously approved plans for Building B/20 Union Court that clearly showed two residential units. The overall development as approved and amended contained 10 residential units, one of which was specifically an affordable unit. With the unification of Building B/20 Union Court Units C and D, the development contains nine residential units overall. This is a reduction in the residential units approved by the Commission and potentially impactful in light of the acute housing crisis. The Commission voted on June 22, 2023 that the unification did not constitute a modification and no further action was needed.

- **Modification (7) Building B/20 Union Court Exterior Staircase & Skylight:** According to the Applicant, an exterior staircase on the Western end of Building B/20 Union Court was never on plans approved by the Commission and is therefore an unapproved modification. Also, a skylight has been cut into the Southern roofline that appears to have never been on plans approved by the Commission. The Commission voted to approve this modification on June 22, 2023 without a hearing.
- **Modification (8) Building F/2 Union Court Western Exterior Wall:** The exterior Western wall on Building F/2 Union Court is devoid of windows counter to floor plans previously approved by the Commission. The streetside effect is a somewhat monolithic when looking down at the building from the top of Union Street. The Commission voted to approve this modification without a hearing on June 22, 2023.
- **Modification (9) Building F/2 Union Court Building Entrance:** In an apparent effort to adhere to ADA standards in a customized manner, the Applicant has gone before the Commonwealth's Architectural Access Board to modify a sidewalk ramp that leads into the ground floor unit of Building F/2 Union Court. This unit is presently occupied by Sea Bags, LLC (see CR 1-2023). The ramp differs from prior plans in its width, railings, and in a portion of its orientation. According to the Tisbury Building Department, wood laid down on the ramp surface may not be ADA compliance. Therefore, there may be another change in store for the ramp. The Commission voted to approve this modification without a hearing on June 22, 2023.
- **Modification (10) Building D-2/30 Union Court Azek Trelliswork:** Counter to plans previously approved by the Commission, the Applicant has affixed synthetic material (Azek) trelliswork to the Southern face of Building D-2/30 Union Court. On a prior elevation plan the trelliswork was clearly marked as cedar. The Commission voted to approve this modification without a hearing on June 22, 2023.
- **Modification (11) Building D-1/26 Union Court Asphalt Shingles:** Apparently asphalt shingles aren't allowed at this development. The Applicant has clad the majority of the Southern roofline on Building D-1/26 Union Court with such shingles. This is the proposed location of a solar panel array. It's unclear if the proposed solar panels, would screen all the asphalt shingles from public view. The Commission took no action on this item, deeming it part of the Solar Panel approval.
- **Modification (12) Building E/8 Union Court Skylight:** Per the Applicant's Agent, an unapproved skylight was added to the western roof of Building E/8 Union Court. The Commission voted to approve this modification without a hearing on June 22, 2023.
- **Modification (13) Building A/75 Main Street & 16 Union Court, Building B/20 Union Court, Buildings D-1/26 Union Court and D-2/30 Union Court, Building E/8 Union Court, and Building F/2 Union Court Door, Railing, and Window Changes:** As compared to prior elevation plans,

the elevation plans posted under “Overall Site Plan and Elevations 23-1-23 CORRECTED,” on January 23, 2023 as part of DRI 674 M3 Stone Bank Restaurant, contain altered doors (eliminations and relocations), altered balcony, deck and exterior stairway railings (elimination of wirework for woodwork or cement clapboard clad woodwork) and altered windows (eliminations and relocations). “Overall Site Plan and Elevations 23-1-23 CORRECTED” is cited in the decision for DRI 674 M3 Stone Bank Restaurant. However, these plans don’t appear in the minutes covering 674 M3 Stone Bank Restaurant. It’s unclear why they were included in the record when the focus of DRI 674 M3 Stone Bank Restaurant was centered on Building C/24 Union Court and Building E/8 Union Court and not centered on other buildings in the development. There appears to be no record of the Commission specifically voting on these door, railing, and window modifications. Should the Commission opt to vote on these modifications as part of DRI 674 M5, they are bundled for a single vote. The Commission voted to approve the door, window, and railing modifications without a hearing on June 22, 2023.

- Modification (14) Building A/75 Main Street & 16 Union Court, B/20 Union Court and Buildings D-1/26 Union Court and D-2/30 Union Court, Building E/8 Union Court, and Building F/2 Union Court **Chimney Aesthetics:** As compared to prior elevation plans, the elevation plans posted under “Overall Site Plan and Elevations 23-1-23 CORRECTED,” on January 23, 2023 as part of DRI 674 M3 Stone Bank Restaurant, contain altered chimneys (traditional squared shapes exchanged for smaller, rounded-metal shapes topped with cylindrical, meshed caps). It’s unclear if the previous, squarish chimneys were simply meant to be wood frames for chimney pipe or if they were masonry. “Overall Site Plan and Elevations 23-1-23 CORRECTED” is cited in the decision for DRI 674 M3 Stone Bank Restaurant. However, these plans don’t appear in the minutes covering 674 M3 Stone Bank Restaurant. It’s unclear why they were included in the record when the focus of DRI 674 M3 Stone Bank Restaurant was centered on Building C/24 Union Court and Building E/8 Union Court and not centered on other buildings in the development. There appears to be no record of the Commission specifically voting on these chimney modifications. Should the Commission opt to vote on these modifications as part of DRI 674 M5, they are segregated from door, railing, and window modifications to stand alone. This is because they reflect an alteration of the proposed skyline and are visible to the general public from outside the Stone Bank Development. On June 22, the Commission set aside chimney modifications for further review and suggested a review of fireplaces. On July 6, 2023, the Commission voted not to approve the chimney modifications (on an aesthetics basis) without a hearing and authorized a review of the fireplaces connected to those chimneys. The LUPC subsequently reviewed photography of mockup chimney coverings created to mitigate the look of metal chimneys at the Stone Bank Development. The coverings presented as squarish wooden cases that gave the chimneys a more traditional look. The LUPC voted to recommend to the Commission that the covering design was an acceptable appearance remedy and that a hearing would be unnecessary. On September 21, 2023 the Commission voted to approve aesthetic remedies to the chimneys without a hearing.
- Modification (15) Building A/16 Union Court, Building E/8 Union Court, and Building F/2 Union Court **Chimneys & Fireplaces:** On July 24 the LUPC made a finding of fact, following a review of floor plans, that four fireplaces out of seven constructed at the Stone Bank Development were patent enough to have been previously approved by the Commission. The LUPC found that the three remaining fireplaces were not sufficiently discernable on floor plans

and therefore the Commission could not have knowingly approved those fireplaces. However, the LUPC did not make a recommendation on the fireplace count. The LUPC did not make a recommendation as to whether fireplaces constituted an amenity or an energy source that may run counter to a prior decision condition. September 7, 2023 the Commission voted to deny the three chimneys and the fireplaces connected to them. The Partial Determination states, “[t]he Commission found, based on plans presented as part of the DRI 674 M Stone Bank Condos review, that it could not have reasonably concluded Building A at 16 Union Court, Building E at 8 Union Court, and Building F at 2 Union Court were to be topped with chimneys, nor reasonably discerned fireplaces in those buildings. Accordingly, the aforementioned chimneys and fireplaces constitute unapproved modifications that have been denied. The Applicant must either remove both the chimneys mounted on the referenced structures and the fireplaces located within those three structures within 90 days or return to the Commission with a further request for modification seeking approval of an alternative proposal. If either task cannot be performed within 90 days, the Applicant may request in writing a time extension from either the Executive Director of the Commission or the Chair of the Commission.” See 2.3 LUPC for the Applicant’s October 11, 2023 proposal to address this denial.

- **Modification (16) Building E/8 Union Court: Building Addition/Footprint Change:** As part of the Architect Morris Schopf drawing set provided for LUPC review (slated October 16, 2023), the Applicant has provided floor plans for Building E/8 Union Court that show a footprint change to the building. Specifically, floor plans in the Architect Morris Schopf drawing set show a restroom on the Northeast corner of Building E/8 Union Court that extends beyond the previously approved outer walls—essentially an addition. Prior plans submitted as part of DRI 674 M3 show two restrooms inside the previously approved footprint of Building E/8 Union Court. Floor Plans in the Architect Morris Schopf drawing set also show two restrooms, however one is within the building footprint and one is outside the building footprint.

2. ADMINISTRATIVE SUMMARY

2.1 DRI Referral: Self-referral

2.2 DRI Trigger: 1.2 Modification of a previous DRI

2.3 LUPC:

- **LUPC:** On June 20, 2023 the LUPC approved a Landscape Plan for the vicinity of the Stone Bank Restaurant pursuant to DRI 674 M3. The LUPC opted not to reconcile prior landscape plans, notably from DRI 674 M, with the material the Applicant submitted for the June 20, 2023 review. As part of the approval, the LUPC requested the removal of a proposed fountain in the Public Pocket Park and instead, the installation of a specimen tree. The LUPC requested more seasonally diverse and shrubbery with greater screening capacity to flank an unapproved fence that divides public portion of the development from the semi-private and private portions of the development. The LUPC requested the Applicant reduce or eliminate concrete surfaces in the Public Pocket Park in favor of pavers or some more porous or permeable hardscape surface. As part of the approval, additional plantings are to be installed to screen the transformers on the Southern side of Building F/2 Union Court.
- Regarding an Exterior Lighting Plan (pursuant to DRI 674 M3), Condition 10 of the DRI 674 M3 decision states: “The final exterior lighting plan for the entire property shall be submitted to

the LUPC for review and approval prior to receipt of a Certificate of Occupancy. All exterior lighting shall be downward-shielded and comply with International Dark Sky Association standards. The color temperature of exterior lighting shall not exceed 3,000 Kelvin. The plan shall include all path lighting, and restaurant lighting which shall be confined to and contained within the restaurant area.” The LUPC declined to vote on Exterior Lighting Plan material presented to it on June 22, 2023, citing insufficiency and inadequacy of the material. Similar material was presented to the LUPC on July 24, 2023 and the LUPC again declined to vote, citing insufficiently and inadequacy of the material. Exterior Lighting Plan material previously submitted shows fixture layouts that extend beyond the restaurant area to other parts of the development. On September, 5, 2023 the LUPC also declined to vote on the Exterior Lighting Plan but found the material presented had improved. Finally, with the submission of drawings showing the angle and beam spread of fixtures on fencing and under the eaves of 24 Union Court, the LUPC approved an Exterior Lighting Plan on October 2, 2023.

- Regarding a Pest Control Plan, Condition 3 of the DRI 674 M3 decision states: “Within six months after one full year of operations, a pest control program shall be submitted to the LUPC for review and approval. The plan shall be developed in consultation with the immediate residential abutters, and address, at minimum, procedures for the containment of trash and the frequency of pickups. The plan may not include the use of pesticides or other toxins.”
- The LUPC has not approved the Architect Morris Schopf drawing set for the taqueria that will operate at 8 Union Court and 24 Union Court. A review and vote is expected October 16, 2023.
- The Architect Morris Schopf drawing set contains several departures from plans provided to the Commission during the DRI 674 M3 Stone Bank Restaurant Review. Among those changes are a different bar and different bar seating.
- In what may be run counter to Condition 4 of the DRI 674 M3 Stone Bank decision, the Applicant appears to have commenced work on takeout windows for the restaurant, the outdoor seating area of the restaurant, and other aspects of the restaurant. As previously mentioned, the Applicant has yet to receive LUPC approval for specific aspects of the Stone Bank Restaurant. Condition 4 of the DRI 674 M3 Stone Bank decision reads: “A final drawing set for the proposed awning, deck, fish tank, take-out window, and other features of the building and seating area, including any proposed colors, prepared in accordance with the DRI application guidelines, shall be submitted to the LUPC for review and approval prior to the receipt of a Building Permit.” At a meeting of the LUPC on June 20, 2023 the subject of compliance in the face of Condition 4 was discussed. The Applicant’s Agent admitted work in that area of the restaurant was proceeding without a building permit. Work on this part of the development has ceased. The Town of Tisbury has expressed concern about the safety of the open jobsite.
- The Architect Morris Schopf drawing set contains a fireplace-shaped feature situated in the Northeastern section of the outdoor seating area. The feature is labeled “LOCATION OF ‘FIRE FEATURE’. SEE MFR. INFO. (DETAILS T.B.D)”.
- Condition 5 of the DRI 674 M3 Stone Bank decision reads: “[a]ny plan for outdoor heating shall be submitted to the LUPC for review and approval prior to receipt of a Building Permit.” Condition 6 of the DRI 674 M3 Stone Bank decision reads: “[a]ny outdoor heaters shall not use fossil fuels.” It’s unclear what type of fuel this feature will use. However it appears likely the feature must be reviewed by the LUPC pursuant to Condition 5.

- The Architect Morris Schopf drawing set does not evidence a fish tank. Condition 4 calls for a fish tank to be shown in the drawings.
- In an October 11, 2023 email, the Applicant’s primary agent wrote: “[y]ou should assume that there will be no fish tank and no fireplace. If either of these come up in the future they will be handled as modifications.”
- In an effort to seek a remedy/solution to the present unapproved state (denied by vote of the Full Commission) of chimneys and fireplaces on and in Building A at 16 Union Court, Building E at 8 Union Court, and Building F at 2 Union Court, the Applicant has proposed converting several electric appliances and water heaters from propane to electricity.
- In an October 11, 2023 email, the Applicant’s Primary Agent summed up the proposal:

“ I am proposing to install three gas fireplaces in the project in exchange for:

1. Using all-electric cooking instead of gas in three residential units. (R-5, R-10 and R-11)
2. Using electric ovens instead of gas in four residential units. (R-4, R-7, R-8, and R-12)
3. Using electric hot water instead of gas in two residential units (R-10 and R-11)
4. Using electric hot water instead of gas in five commercial units (C-2, C-4, C-5, O-5 and O-1)”

2.4 Full Commission: Slated October 19, 2023

3. PLANNING CONCERNS

3.1 Wastewater

- On June 8, 2023, the Applicant applied for sewer flow to service a proposed 85 seat restaurant in the historic bank building at 75 Main Street. The Application contained the following material:
- “Restaurant Details: The existing bank is an iconic space built in 1905. Its beloved old-world details are unique on the Island and should contain a use that keeps the space open to the public where it can be experienced by all. A restaurant is the ideal use. The décor will respect and maintain the existing richly detailed interior. The vault will be repurposed as a wine room and the massive vault door repurposed into a common dining table. A baby grand piano may be located in the main room, allowing for live piano music at times.”
- “A floor plan is attached. This will be an ‘American’ restaurant, featuring fresh cuisine sourced from the Island wherever possible. Most items will be either sautéed or grilled. A limited number of items will be fried.”
- “Infrastructure: In anticipation of this application the owner has, with approval of the Sewer Superintendent, already installed a 1000 gallon grease trap and an E-1 sewer ejector pump as part of the Stone Bank site development. Outlets for kitchen and bathroom flow have been piped into the space to allow construction of the restaurant with minimal exterior construction and thus minimal disturbance A 400 ampere electrical service has also been installed. This project is in every sense ‘shovel ready.’”
- The Applicant’s Primary Agent told staff on October 10, 2023 that sewer flow had not yet been granted. This has not yet been confirmed with Tisbury’s Wastewater Department.

- According to the Building Department, the Applicant has applied for an interior demolition permit for the historic bank building at 75 Main Street.
- The Commission has previously suggested it would prefer to address any restaurant in the historic bank building as a standalone DRI. In light of this, it may be appropriate to reserve matters related to the historic bank building for a later DRI.

3.2 Stormwater/Floodwater:

- A barrier presented by the Southern portion of the foundation of Building D-2/30 Union Court, the retaining wall built against it, a proposed fence gate, and other topographical features raised staff concerns about detrimental floodwater circulation.
- Plans approved by the Commission in a prior decision showed the Northern and Southern sides of foundation as columnar, not as solid. However, the foundation was eventually built in a solid manner on the Southern side and columnar on the Northern side.
- The change from columnar to solid construction constituted an unapproved modification. This became the core modification for DRI 674 M5 Stone Bank Development.
- Additionally, floodwater concern rose regarding a proposal by the Applicant to carve a path through a low, beach-rose-capped dune to reach the beach at the Easternmost portion of the development site.
- Staff recommended a study be conducted to ascertain if a hazard exists and if so, how it might be mitigated. This was also what members of the LUPC suggested on June 12, 2023. Tisbury’s Conservation Agent suggested at the June 20, 2023 LUPC meeting that it may be appropriate for the Massachusetts Office of Coastal Zone Management to conduct a review floodwater flow in the area.
- The Commission tapped the Woods Hole Group to research the issue. In an August 25, 2023 report, the Woods Hole Group found that the foundation (and retaining wall and fencing) would not significantly impact floodwater flow.
- On September 7, 2023, as part of its third partial decision on DRI 674 M5 Stone Bank Development, the Commission approved the foundation modification for Building D-2/30 Union Court

3.3 Traffic and transportation

Two bus shelters utilized by Vineyard Transportation Authority (VTA) passengers are located on the Eastern end of the Stone Bank Development site. Per a License Agreement provided by the Applicant, the land under which the Bus Shelters are located was licensed to the Town of Tisbury by Sovereign Bank (later known as Santander Bank), the previous owner of the Stone Bank Development site. The License Agreement was signed May 14, 2010 by Sovereign Bank Senior Vice President Patti B. Davis and by then Tisbury Select Board Chair Jeff Kristal. It’s unclear if the License Agreement is still in force. It’s also unclear what legal arrangements, if any, the Town of Tisbury has made with the VTA regarding the Bus Shelters. As protection from wind and rain at a stop on multiple bus routes in a regional transportation network (VTA)—protection that’s adjacent to another regional transportation network (the Steamship Authority)—the bus shelters have the appearance of necessity and importance. Pursuit of an easement as opposed to a licensing agreement could prove a more durable and long-lasting method of ensuring the shelters remain in place. Presently, the license agreement, if still in force, would be subject to the disposition of the condominium association that will govern the Stone Bank Development. That is to say, the

agreement could potentially be terminated if the condominium association saw fit. The Commission has not explored this matter further.

3.4 Climate Resilience

- See Modification (5) and 3.2 Stormwater/Floodwater

3.5 Impact on Abutters

- While vocal in prior iterations of this DRI, the immediate Northern side neighbors to this project haven't made public comments on DRI 674 M5.

3.6 Municipal Services & Taxpayers

- Tisbury's Fire Department has expressed concern about emergency access to the back or Northern edge of the Stone Bank Development site. Just past the Western face of the historic Stone Bank, a driveway that provides access to residences at 79 & 83 Main Street exists. The driveway skirts the Northern sides of Buildings A (75 Main Street and 16 Union Court and Building B (20 Union Court) and more distantly runs behind Buildings D-1 (24 Union Court and Building D-2 (30 Union Court). According to the Tisbury Fire Department, fire apparatuses cannot make the right-hand, right-angle turn from Main Street into the driveway. Also according to the Tisbury Fire Department, while doable, such a turn is difficult for an ambulance. Furthermore, the Tisbury Fire Department has expressed concerns about the width of the driveway. According to the Tisbury Fire Department, a "loophole" has allowed Stone Bank Development to proceed despite these access issues and after a consultation with the Massachusetts Fire Marshal, according to the Tisbury Fire Department, there appears no way around the loophole. An alternate access point exists off the Steamship Authority's roundabout at the intersection of Union and Water Streets. If a curbside bollard, on land apparently controlled by the Steamship Authority, were to be removed or made to be removable when needed, then, according to the Tisbury Fire Department, an existing curb cut could be utilized to gain access to the rear of the Stone Bank Development and the adjacent residences at 79 and 83 Main Street. The Applicant has provided drawings that show a vehicle-sized gate at the curb cut and has expressed a willingness to allow emergency vehicle access at that spot if the bollard situation can be resolved. In January, the LUPC concluded the Commission cannot compel the Steamship Authority to take action in this matter. On October 11, 2023 the Tisbury Fire Department indicated access issues have not been resolved and remain a serious concern.
- As the project progressed, a plan or map of underground utilities hadn't surfaced. Concern about how much danger the absence of such a plan pose, especially in an emergency, arose? Also, concern over the absence of such a plan placing an undue burden on condominium owners and/or the condominium association insofar as the potential perils that might be associated with repairs, arose. In August, 2023, the Commission did receive a Utility Plan dated August 7, 2023. The Utility Plan was generated by Schofield, Barbini & Hoehn.
- On the Northeastern edge of the project site where it faces a municipal parking lot, according to the Tisbury Fire Department, curbing was supposed to be flush so it could be driven over by fire apparatuses. However, the curbing was installed in a raised manner. Additionally, a post has been installed. These impediments make it improbable that fire apparatuses can access that area as previously contemplated.
- The Architect Morris Schopf taqueria plans, which include the restroom addition to Building E/8 Union Court, appear to have eliminated a standpipe in favor of a doorway. The plans

don't match the facts on the ground presently as there are two doorways with a standpipe between them on the Eastern face of the building. The plans eliminate a doorway and set another doorway where the standpipe is currently installed. According to the Tisbury Fire Department, this amounts to a municipal-level unapproved modification of the sprinkler system. As far as the Commission is concerned, the disparity between what has been built and what the plans call for may, in the end, amount to another modification.

- The Architect Morris Schopf taqueria plans differ from plans previously provided to the Commission during the review of DRI 674 M3 Stone Bank Restaurant in that where a restroom was previously located in Building E/8 Union Court is now a room called "EMPLOYEE SERVICES". This room must be passed through to access the sprinkler room from the inside of the building. On the same plans, sprinkler room is marked "SPRINKLER/WATER HTR/DRY STORAGE". According to the Tisbury Fire Department, nothing can be located in the sprinkler room except for the fixtures and instruments that control the sprinkler system. At a minimum, this change of usage or expansion of usage, constitutes a municipal-level unapproved modification.

3.7 Public Facilities

- See 3.1 Wastewater