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# Martha's Vineyard Commission

## DRI #674-M3 Stone Bank Restaurant

### MVC Staff Report – 2023-1-11 UPDATED

#### 1. DESCRIPTION

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- 1.1 **Owner:** Sam Dunn, Patrick Lyons (under purchase and sale agreement for the building)
- 1.2 **Applicant:** Sam Dunn
- 1.3 **Project Location:** 16 Union Street (Map 7, Block D, Lot 10), Tisbury (0.324 acres)
- 1.4 **Proposal:** Modification of DRI 674-M to allow for a 70-seat outdoor restaurant with indoor kitchen.
- 1.5 **Zoning:** Business 1 (B1)
- 1.6 **Local Permits:** Tisbury Planning Board and ZBA, wastewater approval
- 1.7 **Surrounding Land Uses:** Business 1 (B1), Business 2 (B2), and Waterfront Commercial zoning districts; surrounding uses include an existing residence with access from Main Street, the Steamship Authority Terminal, Vineyard Transit Authority transportation hub, a town-owned parking lot, Stop and Shop, and other businesses along Main, Union, and Water streets.

**Project History:** The Old Stone Bank building on Main Street was designed by architect J. Williams Beal in 1905 and constructed by local stonemason James Norton using local field stones. Businessman and Tisbury resident William Barry Owen had purchased a controlling share in the property in 1904. The building is a notable example of the Romanesque and Bungalow styles. A separate building on the site, previously used for drive-through banking, was constructed in a similar style in 1910, with the drive-through portion constructed in 1988.

DRI 674 in 2017 involved the removal and replacement of terra cotta tiles on the bank building. The tiles had already been removed and replaced with asphalt shingles when the project was referred to the Commission in 2016. The Commission voted to deny the application and require that the asphalt shingles be replaced with ceramic tiles consistent with the historic character of the building. Santander Bank closed the bank branch in 2017 and put the property up for sale. The tiles were replaced in 2019.

The MVC has approved the following modifications to DRI 674:

- DRI 674-M (May 2021): Renovation of two existing buildings and construction of five new buildings, with a total of 10 residential units and seven commercial units. The existing Stone Bank and annex (Building A) and a separate drive-through building (Building C) were to include a total of two residential units; one existing building was to be demolished and replaced with another building (Building B) to include two residential units; and four other new buildings (D1, D2, E, and F) were to be constructed with a total of six residential units. As conditioned, Building A (minus the annex) was to have commercial uses on both floors, and buildings B, C, E, and F were to have retail and/or office uses on the first floors. The

total proposed square footage of structures on the property was 20,320 ft<sup>2</sup>, with 13,194 ft<sup>2</sup> residential and 7,126 ft<sup>2</sup> commercial.

As conditioned, all commercial units were to be for office or retail use, with any proposed changes requiring MVC approval. In addition, Buildings A and F were to be revised to comply with Tisbury Zoning Bylaw 05.21.01, which prohibits commercial uses from occurring above residential uses in the B1 District. That revision was made with the LUPC's approval in June 2021.

The project is currently under construction.

- DRI 674-M2 (August 2021): Modification of DRI 674-M Condition 2.1 to remove a 21-day limit on rentals for the residential units, and associated changes to the condominium Declaration of Trust and Master Deed.
- DRI 674-M4 (June 2022): Modifications to eliminate second floor of Building C (unit R6), eliminate rooftop solar panels except on Building D1 (unit R7), and add a balcony on Building B. This was approved with the exception of a final plan for solar panels, which is still pending.

In addition to these modifications, the LUPC in August and September 2021 approved changes to the condominium documents including provisions related to the sale of parking spots, in order for the project to comply with the MVC conditions for DRI 674-M, and several other minor changes and corrections. The LUPC approved final recommendations by the Tisbury Historical Commission (THC) in 2022. A site visit for the MVC and THC to view proposed paint colors, trim, sidewall and other features as required by the LUPC took place in August 2022.

Various issues with access, structures, and utilities have come to light during the construction of the Stone Bank Condos project. The MVC Executive Director informed the applicant in July 2022 that a professionally surveyed, dimensional, as-built site plan must be submitted to the MVC prior to any Certificate of Compliance for the project. The MVC will review the site plan and may require further mitigation for any discrepancies with the approved plans.

**Project Summary:** The proposal is to modify DRI 674-M by changing the ground-floor use of Building E from office/retail to a restaurant, and replacing a proposed lawn just east of Building E with a wooden deck and 70 outdoor seats for the restaurant, including an outdoor bar. The lawn area is designated in the condo master deed as a Limited Common Area (LCA) for the commercial unit in Building E. The proposal will entail certain changes to the master deed, which currently identifies all the commercial units as offices.

The modification includes a second-floor deck across the eastern side of the Building E (already-built), compared to the approved plans from 2021, which showed a smaller deck.

The restaurant would be open seasonally for lunch and dinner from April to November (and possibly for takeout in the off-season), with about 650 ft<sup>2</sup> of indoor kitchen space and a 1,200 ft<sup>2</sup> outdoor seating area, including a full-service bar. Two restrooms for patrons only would be located in the building. The restaurant is proposed as a "fast food" establishment (see section 3.1 below).

Patrons would seat themselves and order and pay online using their phones, or via a pick-up window in the building. The future owner would be Patrick Lyons, a summer resident and restaurateur from the Boston area who also owns Back Door Donuts.

After the close of the hearing, the applicant submitted a security and fencing plan for the area around Building D2, the courtyard to the west, the proposed trash area, and behind existing buildings on Union St. The proposed fencing would include a 6' fence above an existing planter along the south side of Building D2. The fence would extend east across the deeded access to the Stam property, and between the existing bus shelters. The portion of fencing in front of Building D2 has already been built. The portion in front of the access road would be gated for foot access by residents. The courtyard to the west would also be fenced and gated, with signs saying "Residents Only." However, the buildings within the courtyard will also have business uses. It should be noted that the configuration of walkways is also different than originally approved. The fencing plan and other changes may need to be addressed separately from the current proposal.

*Note that the buildings were relabeled during the town review, but the labels for this modification review are the same as for DRI 674-M.*

## **2. ADMINISTRATIVE SUMMARY**

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- 2.1 DRI Referral:** Self-referred, Sept. 9, 2021
- 2.2 DRI Trigger:** 1.3D (Previous DRI)
- 2.3 LUPC:** Nov. 8, 2021; June 21, Nov. 10, 2022
- 2.4 Public Hearing:** Dec. 1, 2022; Jan. 12, 2023

## **3. PLANNING CONCERNS**

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- 3.1 Wastewater:** Prior to 2020, the property had been allowed to generate 905 gallons per day (GPD) of wastewater. As part of the permitting process for the Stone Bank project (DRI 674-M), the applicant received two approvals from the Town Sewer Advisory Board to increase that amount to 2,310 GPD for the property. The second approval was good for one year, after which the applicant would need to apply for renewal. It was not clear if the first approval also had a one-year limit. According to the town Wastewater Department, the proposed restaurant use requires an additional 1,176 GPD (70 seats x 20 gallons – 224 GPD for removal of unit R6 as part of DRI 674-M4). In August 2021, the Wastewater Department approved a total of 3,486 GPD for the Stone Bank project with conditions. If additional dishwashing equipment were to be added in the future, additional wastewater flow may be required.

The applicant has presented the project as a "fast food" establishment under Title V, which assigns a lower wastewater generation rate for that type of restaurant (20 versus 35 gallons/day/seat). Fast food is not defined in Title V, but according to DEP Environmental Engineer Ian Jarvis, it means that all of the utensils (plates, glasses, and eating utensils) are disposable. That would not be the case here, since the proposal includes regular or reusable glasses, cutlery, baskets, bowls, and dishware that would be washed in two high-temperature under-counter dishwashers. Pots and pans would be washed in a three-bay sink. However, Jarvis also stated: "Once a design flow has been identified under Title V, the Approving Authority (the town in this case) then determines if there is capacity to accommodate the daily flow generated by said establishment based on what is

permitted in their ground water discharge permit.” According to the town Wastewater Superintendent, the town Sewer Advisory Board considers the proposed use to be fast food with a generation rate of 20 gallons/day/seat. The town intends to monitor the restaurant’s water usage for two years, and adjust the approval as necessary.

**3.2 Solid waste:** As proposed, most dining materials would be disposable or biodegradable, which raises concerns about solid waste production. An “Environmental Impact Minimization Plan,” provided in November, proposes washable aluminum pans and plastic serving baskets with paper liners, bioplastic utensils, and other packaging materials labeled as biodegradable. The applicant has clarified that the biodegradable items would go into the regular trash stream. Tote containers for waste, recycling, and compost would be stored in what was originally shown as the general trash area for the condo units, which would have a capacity of 24 90-gallon totes. Up to 8 of those would be used by the restaurant, with trash pickup 2-3 times per week or as needed based on the quantity produced. The applicant will partner with Island Grown Initiative and Bruno’s Rolloff on a composting program, with pickups once a week. The applicant has stated that the main trash area will serve the restaurant, adjacent retail store, and four residential condo units, and that half the residential units would have their own trash areas. The totes would be locked to help control pests, and the applicant has stated that a pest control program will be implemented.

According to the applicant:

- *The restaurant will produce virtually no plastic waste.*
- *All beverages will be served in washable glasses. All soups and condiments will be served in washable containers.*
- *The majority of food items ... will be served in baskets with biodegradable/compostable paper liners and eaten without utensils.*
- *Some items ... will be served on washable plates or aluminum pans. Where utensils are required they will be washable.*
- *Cooking oils will be recycled.*
- *The restaurant will not use traditional automatic dishwashing. Cookware and reusable aluminum serving dishes will be washed by hand in a 3-bay sink. Glasses, cutlery, plastic baskets, soup bowls and dishware will be cleaned in 2 high-temperature, low-water CMA washers.*
- *All remaining service items used in the restaurant will be disposable, paper-based, biodegradable material – primarily napkins and compostable basket liners.*
- *All takeout packaging will be biodegradable.*

**3.3 Traffic and Transportation:** The Stone Bank project as a whole has 19 parking spaces, with at least one space dedicated to each residential unit. There are no spaces dedicated to the proposed restaurant, although the applicant has stated that the owner will purchase three spaces associated with his residential unit in Building D2 that could be used for employee parking. Customers would need to either walk to restaurant or use public parking in the downtown area.

The proposed hours for the restaurant are 11:30AM-10:30PM, seven days a week. Food delivery would be available for customers, with a 12’ curb cut in Union St. for a delivery vehicle.

At the request of the MVC and Tisbury Planning Board, an independent [Transportation Impact Assessment](#) was completed by Fraser Poly-Engineering Services (FPES) in April 2022. The report includes an assessment of existing (2022) and future (2029) traffic characteristics, including intersections and roadways in the immediate area.

Projected traffic:

- 378 new weekday average daily trips (189 in, 189 out)
- 53 new weekday PM peak hour trips (24 in, 29 out)
- 382 new Saturday average daily trips (191 in, 191 out)
- 41 new Saturday peak hour trips (23 in, 18 out)
- Projected parking need: 17 spaces (Saturday weekend peak hour)

The report finds no parking, safety, or level of service (LOS) impacts in the vicinity of the project, but recommends the following transportation demand management and site access strategies for the project:

- *Proponent should ensure that the proposed overall site design has adequate accommodations for pedestrian access and circulation. This should include but not be limited to:*
  - 1) *Adequate walk-way width especially for wheelchair access.*
  - 2) *Removal of barriers that may impede the path of travel.*
- *Transit maps and schedules should be provided on the proponent's website to encourage the use of public transits.*
- *Transit, maps, and schedules be available at the establishment to encourage patrons to use non-automobile only access.*
- *Provide employees with transit passes.*
- *Bicycling and Walking: Provision for bicycles facilities such as bicycle racks should be provided.*
- *The proponent working with the Town of Tisbury should assist in the study of bicycle network connectivity in the area.*
- *Develop a "Wayfinding" system to aid pedestrians and cyclists to better navigate the area.*
- *Car/Ridesharing: Encourage employees of the restaurant to carshare/rideshare to and from work by connecting them with websites that promote carpooling.*
- *Encourage patrons to access the restaurant via ridesharing to reduce parking impact.*
- *Provide promotional discounts for the use of alternative transportation such as ones mentioned above to restaurant patrons who use ride-share, transit tickets, bike, or walk.*

The conditions for DRI 674-M also require commercial unit owners to offer free VTA bus passes to any of their employees who request one.

**3.4 Character and Identity:** The proposal is located within the B1 district, in the vicinity of other commercial and restaurant uses. The project site is highly visible, given its proximity to the town

parking lot, VTA hub, and Steamship Authority terminal to the south. Examples of the proposed retractable awnings and outdoor lighting have been provided. The proposed bar area would be located beneath the drive-through portion of the building. The proposal would not affect the exterior of the existing drive-through building as previously approved, other than the addition of the awnings, but would possibly add a take-out window to Building E. Details about the take-out window have not been provided.

- 3.5 Economic Development and Housing:** The owner estimates that the restaurant will create up to nine jobs (1 full-time manager, 3 full-time cooks, three part-time bussers, and two part-time bartenders). The restaurant would be open seasonally for lunch and dinner from May to October, 11:30AM-10:30PM and possibly for takeout in the off-season. Maximum hours for takeout would be 11:30AM-1:30PM and 5PM to 9PM, seven days a week.

The applicant has stated that the future owner (Patrick Lyons) currently provides some housing for employees of Back Door Donuts, and that Lyons would aim for Back Door Donuts and the new restaurant to share the same employees, so some of the new employees would potentially have housing. According to the applicant, Back Door Donuts currently has about 20 employees, 10 of which would be available to work at the new restaurant. The applicant has stated that the manager and cooks would only work at the restaurant, while other workers could work at both the restaurant and Back Door Donuts.

The applicant has stated that about 10 Back Door Donuts employees currently have employer-provided housing, and that Lyons would try to employ local residents who already have housing, and/or family acquaintances who could live with him on the Island during the summer. Back Door Donuts will provide two rental properties for employee housing in 2023: 1 Marvin Ave. (four bedrooms), and 3 Laurel Ave. (four bedrooms), both in Oak Bluffs. The applicant has stated that the baker for Back Door Donuts also rents two rooms in his residence to employees.

There would be one 11-hour shift per day, with a two-hour break in the afternoon. It is unclear what sort of shelter or break area would be provided for employees, including food runners and bussers.

The housing mitigation fee of \$73,600 for DRI 674-M is due upon issuance of a Certificate of Occupancy. (This would be \$77,200, if adjusted for the current modification.)

The applicant has stated that the restaurant will use local ingredients wherever possible, including seafood, dairy, fowl, and produce.

- 3.6 Stormwater and Drainage:** The stormwater plan for DRI 674-M relied on direct percolation into existing or replaced sandy soils. The proposed seating area would be covered with decking above the soil, with drainage directly into the ground. The restaurant area would serve as a drainage basin for about 7,800 ft<sup>2</sup> of impermeable area, including the roofs of the two adjacent buildings. Runoff from the roofs and canopies would be directed under the decking via gutters and downspouts.

The Planning Board and MVC required a peer review of the stormwater management plan, which was conducted between June and November 2022. The following [documents](#) were submitted for the peer review:

- Stormwater narrative, 6/30/22
- Map of drainage areas, undated; 11/9/21 base map
- Grading plan, 7/19/22
- Landscape plan, 7/16/21
- Landscape plan, 9/2/22
- Letter from Kent Healy, 3/3/21
- MV Engineering and Design – Drainage Calculations for Proposed Retention Pond, 7/8/22
- MV Engineering and Design – Drainage Calculations for Proposed Catch Basins, 7/28/22

The peer review resulted in the development of an engineered [drainage layout plan](#) by MV Engineering and Design ([later updated](#)), and the following conclusions from FPES:

*Given the site's underlying soil conditions we feel the design method of utilizing the naturally excellent permeability of these soils is an appropriate, and functional approach to controlling the stormwater runoff on the overall site.*

*We do however wish to inform the Town that if the groundwater table becomes unusually high this could diminish the effectiveness, and function of the stormwater management systems. The engineer has stated that the groundwater table is at approximately elevation 1.0. The systems designed are mostly above this elevation. The leaching pits, and drainage trenches have bottom elevations at or below this elevation. These structures will be somewhat limited due to the lower portion being constructed in the saturated soil.*

- 3.7 Energy:** As previously approved, all buildings in the Stone Bank project were to have electric heating and cooling, with propane for cooking. The applicant has proposed propane heaters and fireplaces for the restaurant seating area, which would require further modifying DRI 674-M.
- 3.8 Noise and Lighting:** The seating area and bar would include dimmable LED string lights, but the amount and location are not specified. The restaurant and bar would potentially create noise between the hours of 11:30AM and 10:30PM seven days a week in the summer, with potential impacts on the neighboring residential condo units, including in Buildings E and F. The applicant has stated that future condo owners have been notified of the proposal.
- 3.9 Landscape:** A landscape plan dated 9/2/22 shows plantings within and around the perimeter of the proposed seating/bar area, along with a short granite wall. The plan shows access to the restaurant via concrete pathways from Main St., Union St., and the parking lot to the south.
- 3.10 Impact on Abutters:** The immediate abutter to the north (Peter Stam) notes that as part of the Stone Bank condo project his property has been deeded access from the south, but he has been unable to establish physical access in collaboration with the Steamship Authority, which owns the

area around the access road entrance. Stam has raised the following concerns regarding the current proposal:

- Rodents and pests – Stam has stated that the property already has problems with rats and skunks, which could be worsened by a 70-seat restaurant with trash storage, and has requested that the trash be kept in sealed containers and removed daily, rather than 3-4 times per week as proposed.
- Lighting – Stam has requested that all lighting be downward shielded.
- Noise – The project would add to existing noise, including that generated by Salvatore’s on Union Street. Stam also raised concerns about the possibility of amplified music, and noted that the applicant has agreed to put up a high hedge to help contain noise and light.
- Odor – Stam notes that his property is downwind of the proposed restaurant and has requested that the kitchen vent system include an odor control system.
- Liquor sales without food – A recent town bylaw allows for the sale of liquor without food (liquor may account for up to 35% of total sales), which would be a change from the project as first proposed. Stam has requested that liquor be sold only with food to limit bar traffic, which could increase the amount of noise, trash, and customers associated with the project.
- Restrooms – Stam notes that the increased traffic will lead to an increased need for restrooms, and that this is already a problem with travelers and others urinating outside. Stam has requested that the project include an adequate number of restrooms to accommodate the need.

The above concerns were echoed by abutter John Ryder, who also emphasized the need to control trespassing on the abutting properties. In regard to trespassing, the applicant has submitted a [security and fencing plan](#) for the area around Building D2.

### **3.11 Town Input**

The Tisbury Planning Board has raised the following concerns:

- Mitigation is needed for odor, waste, sound, and lighting.
- The ability for the public to walk through the site was seen as a benefit in the initial review, but will be affected by the presence of the restaurant.
- More information is needed as to how the development will balance density and open space, including who will maintain the landscape and pocket park.
- The restaurant should be monitored for compliance with the town regulations pertaining to alcohol sales, and the bar should close with the closing of food sales.
- It should be clarified how the commercial uses will remain commercial and open to public access given the proposed fencing around the courtyard.

### **3.12 Further action required for 674-M:** The following actions are still required prior to receipt of a Certificate of Occupancy or Certificate of Compliance for DRI 674-M:



- Condition 2.8: The monetary mitigation of \$73,600 shall be paid in full to the Tisbury Affordable Housing Trust Fund prior to the issuance of a Certificate of Occupancy.
- Condition 5.1: Final rooftop solar plan. This was originally required prior to receipt of Building Permit, but the Building Permit was issued prematurely.
- Condition 6.2: A final landscape plan showing the location and types of existing and proposed vegetation, pavers, and surface treatments, and including a long-term maintenance plan along with details related to external equipment ... shall be submitted to the LUPC for approval before a Certificate of Occupancy is issued.
- Surveyed, dimensional, as-built site plan for MVC review, prior to Certificate of Compliance.