



BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453,
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

Martha's Vineyard Commission

DRI 674-M5 Stone Bank Development

MVC Staff Report – 2023-9-6

1. DESCRIPTION

- 1.1 **Applicant:** Dunn MV Investments aka Dunn Family, LLC
- 1.2 **Applicant's Agent:** Reid "Sam" Dunn
- 1.3 **Project Location:** 75 Main Street & 16 Union Street, Tisbury
- 1.4 **Items For Evaluation:** Unapproved modifications, a potential compliance issue and consideration of various project elements specifically set aside in prior DRIs for future review.
- 1.5 **Zoning:** B1 District, small portion Waterfront District
- 1.6 **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
- 1.7 **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.
- 1.8 **State Permits/Reviews:** Architectural Access Board
- 1.9 **Building Plans:** The veracity and consistency of various plans submitted as part of this project have come into question following staff reviews.
- 1.10 **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.
- 1.11 **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, and DRI 674 M4 Stone Bank Condos Modifications.
- 1.12 **Elevation Plans History and 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).

1.13 Site Plan Status: The most recent site plan, executed by Schofield, Barbini, and Hoehn, Inc. on May 3, 2023, was provided digitally on May 18, 2023. Unlike an earlier version provided in-hand, this plan shows the two Bus Shelters (see herein 3.2 Traffic and Transportation). The plan does not label any fencing but appears to represent fence lines with lightly executed markings.

1.14 Restaurant: 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. 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.

1.15 LUPC Review & Approval: Landscape Plan:

- 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.
- As the subject is slated for modification review by the Full Commission on June 22, 2023, the LUPC erroneously comingled a fencing change in with its landscape approve. The change was to

reduce to 4-feet in height, fencing at a gate at the Easternmost end of the Stone Bank Development (Eastward of Building D-2/30 Union Court, in order to preserve a viewshed. This type change of change is reserved for, and should be contemplated by the Full Commission during its review of all fencing at the Stone Bank Development.

1.16 LUPC Reviews Pending: An Exterior Lighting Plan, a Pest Control Plan:

- Regarding a 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.
- 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.”

1.16: Solar Plan (reserved as potential modification):

- 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 DI. 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 I 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 II 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 III 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 IV 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 V: Building D-2/30 Union Court 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 untoward stormwater flow (See IV. Retaining Wall/Planter Wall). The LUPC reviewed the foundation on September 5, 2023 and voted to recommend approval of it, along with associated fencing and a retaining wall. The Commission is set to review the retaining wall on September 7, 2023. The Commission is set to review the foundation on September 7, 2023.
- **Modification VI 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 VII 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 VIII 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 IX Building F/2 Union Court Southern (Union Street-Facing) 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 X 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 XI 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 XII 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 XIII 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 XIV 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 Chimneys:** 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 and authorized a review of the fireplaces connected to those chimneys.
- **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 also reviewed mockups to mitigate the look of metal chimneys at the Stone Bank Development. The mockups showed squarish wooden cases that gave the chimneys a more traditional look. The LUPC voted to recommend to the Commission that the mockup design was an acceptable appearance remedy and that a hearing would be unnecessary. 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.

2. ADMINISTRATIVE SUMMARY

2.1 DRI Referral: Applicant self-referral

2.2 DRI Trigger: 1.2 Modification of a previous DRI

2.3 LUPC: Convened June 12, 2023 and June 20, 2023. On June 12, 2023 LUPC members expressed support for hiring an independent consultant to study stormwater flow around Building D-2/30 Union Court. The Chair of LUPC expressed support for classifying the Solar Plan as a modification and redirecting review of it to the Full Commission. On June 20, 2023 the LUPC approved a

Landscape Plan. See also 1.7. The LUPC met on September 5, 2023 and voted to recommend approval of a foundation/retaining wall/fencing modification. The LUPC also reviewed an Exterior Lighting Plan but did not vote after finding the material presented improved but still insufficient.

2.4 Full Commission: Scheduled September 7, 2023

3. **PLANNING CONCERNS**

- **Stormwater:** The 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 have raised staff concerns about detrimental stormwater circulation. Additionally, floodwater concern has risen 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 recommends 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 stormwater 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.

3.1 **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.

3.2 **Historic Character:** Do the fencing selections enhance, detract, or have no impact on the historic character and Romanesque aesthetics of the early 20th Century Stone Bank?

3.3 **Scenic Values:** Are the fencing choices complimentary, uncomplimentary, or of neutral impact to the neighborhood’s architectural scheme. Do the fencing choices impact the scenic values of the B1 District or Waterfront District? A portion of the DRI 674 M3 decision’s Benefits and Detriments section states: “The project site is highly visible, given its proximity to the Town parking lot, VTA hub, and Steamship Authority terminal to the [S]outh.”

3.4 **Economic Development:** Will loss of a residential unit from Building B/20 Union Court have positive, negative, or neutral economic impact? There is potential loss of revenue to the Land Bank, to the Dukes County Registry of Deeds, and to the Commonwealth. There’s also the loss of local spending that may have been generated by the occupants of the residence.

- 3.5 Safety & Health:** 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, 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. In September, 2023 the Tisbury Fire Department indicated access issues have not been resolved and remain a serious concern.
- 3.6 Safety & Health:** Taking into consideration a 70-seat restaurant, additional takeout window foot traffic, a possible 85-seat restaurant, retail and pass through foot traffic, does fencing placement (the spaces it creates, the prior egress it has sealed off) have a positive, negative, or neutral impact on safe evacuation in the event of a fire, law enforcement, or weather emergency? Furthermore, do the gates chosen (notably width and swing direction) have a positive, negative, or neutral impact on safe evacuation in the event of a fire, law enforcement, or weather emergency?
- 3.7 Safety & Health:** A plan or map of underground utilities hasn’t surfaced, according to Tisbury’s Wastewater Department. How much danger does the absence of such a plan pose, especially in an emergency? Also, does the absence of such a plan place an undue burden on condominium owners and/or the condominium association insofar as the potential perils that might be associated with repairs. In August, 2023, the Commission did receive a Utility Plan dated August 7, 2023. The Utility Plan was generated by Schofield, Barbini & Hoehn.
- 3.8 Housing:** In light of the unification of the residential units in Building B/20 Union Court, should a clause be added to the condominium documents prohibiting the unification of two or more residential units?