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Decision of the Martha's Vineyard Commission DRI 710 Redevelopment of Edu Comp Building

1. SUMMARY

Referring Board: Tisbury Building Inspector

Subject: Development of Regional Impact #710 Redevelopment of Edu Comp Building

Project: Renovation and expansion of the former Edu Comp building, including residential and commercial uses.

Owner: 4 State Road MVY LLC

Applicant: Xerxes Agassi

Applicant Address: 1 Lagoon Pond Road #2109
Vineyard Haven, MA 02568

Deed: Registered Land: Book 83, Page 227; Cert. No. 15264; Document No. 91823

Project Location: 4 State Road, Vineyard Haven. Map 9-A, Lot 6 (approx. 0.487 acres).

Decision: The Martha's Vineyard Commission (the Commission) denied the application for the project as a Development of Regional Impact without prejudice, at a vote of the Commission on July 7, 2022.

Written Decision: This written decision was approved by a vote of the Commission on August 4, 2022.

The permit-granting authorities of the Town of Tisbury shall not grant the request for approval of the Applicant's proposal contained herein. The project is denied.

2. FACTS

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

2.1 Referral

The project was referred to the Commission on June 29, 2021 by the Tisbury Building Inspector for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, DRI Checklist Items 3.1a *Commercial Development of 2,500 to 3,500 ft²*; 3.1f *Change of Use or Intensity of Use for Commercial Development*; 4.1a *Five or more dwelling units*; 4.1b *Five or more rooms for rent*; and 4.1c *Five or more dwelling units or rooms for rent*. Upon review of the application, it was determined that more than 3,500 ft² of mixed-use space would be constructed, which requires a mandatory public hearing as a Development of Regional Impact under Checklist Item 3.1b.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on September 23 and 30, 2021; notice was also published in the Vineyard Gazette on September 24 and October 1, 2021. Abutters within 300 feet of the property were notified by mail on September 21, 2021.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on October 7, 2021, which was continued to November 4, 2021, and then to December 2, 2021. The December 2, 2021 hearing was continued to January 13, 2022 without taking testimony, which was continued to February 17, 2022 without taking testimony. The February 17, 2022 meeting was postponed to March 17, 2022. The March 17, 2022 hearing was continued to April 14, 2022 without testimony. The April 14, 2022 was continued to May 12, 2022, and then continued again to June 16, 2022, and closed at that time with the exception of the written record, which was left open until June 30, 2022 at 5:00 p.m. and closed at that time. The hearings were held entirely using remote conference technology as allowable under Chapter 20 of the Acts of 2021.

2.3 The Plan

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

- P1. Plan of Proposed Easement Across Educomp Inc., 41 Main Street Inc. and Doreen Kinsman, prepared by Dean R. Swift, scale 1" = 20', dated September 26, 1989. (Unrecorded, informal easement between 10 State Road and 4 State Road).

- P2. Easement Plan in Tisbury, Mass. prepared for Forty-One Main Street, Inc. by Schofield, Barbini & Hoehn Inc., scale 1" = 20', dated December 10, 2013. Recorded at the Registry of Deeds Book 1347, Page 270.
- P3. Narrative Proposal including floor plans and renderings for Mixed-Use Development at 4 State Road, consisting of twenty-two (22) pages, dated July 18, 2021.
- P4. Floor Plans and Elevations prepared for 4 State Road Vineyard Haven, MA by Delano & Co. consisting of five (5) 36" x 24" pages, scale 1/8" = 1'-0" and dated July 18, 2021, including: A-2.0 Elevations; A-2.1 Elevations; A-1.0 Floor Plans; A-1.1 Floor Plans; and S-1.0 Sections.
- P5. Narrative Proposal for Mixed-Use Development at 4 State Road, consisting of eleven (11) pages, dated July 20, 2021.
- P6. Preliminary Plan prepared for 4 State Road MVY LLC by Schofield, Barbini & Hoehn, scale 1" = 20', dated July 23, 2021.
- P7. Existing Site Plan prepared for 4 State Road MVY LLC by Schofield, Barbini & Hoehn, scale 1" = 20', dated July 23, 2021.
- P8. Application Package prepared for 4 State Road Vineyard Haven, MA prepared by Delano & Co., consisting of seven (7) 24" x 36" pages, scale 1/16" = 1'-0" and dated August 2, 2021, including: A-100 Existing Site Plan prepared by Schofield, Barbini & Hoehn, scale 1" = 20', dated July 23, 2021; A-101 Lot Coverage Calculation Plan; A-102 Parking Plan; A-103 Drainage Plan; A-104 Lighting Plan; Conceptual Landscape Plan prepared by Donaroma's, dated August 5, 2021; Conceptual Landscape Plan prepared by Donaroma's, scale 1/8" = 1'-0", dated August 6, 2021.
- P9. Revised Parking Plan A-102 for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of one (1) 24" x 36" page, scale 1/16" = 1'-0", dated September 2, 2021.
- P10. Revised Application Package for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of nine (9) 36" x 24" pages, scaled to 1/16" = 1'-0" and dated September 2, 2021 unless otherwise noted, including: A-100 Existing Site Plan prepared by Schofield, Barbini & Hoehn, scale 1" = 20', dated June 23, 2021; A-101 Lot Coverage Calculation Plan, A-102 Parking Plan, dated September 22, 2021; A-103 Lighting Plan; A-104 Proposed Site Plan, dated September 22, 2021; Conceptual Landscape Plan prepared by Donaroma's, dated August 5, 2021; Conceptual Landscape Plan prepared by Donaroma's, scale 1/8" = 1'-0", dated August 6, 2021; SW 1.0 Site Drainage Plan prepared by John Lolley, PE, scale 1" = 20', dated September 17, 2021; SW 2.0 Drainage Details prepared by John Lolley, PE, not to scale, dated September 17, 2021.
- P11. Revised Floor Plans and Elevations prepared for 4 State Road Vineyard Haven, MA by Delano & Co., consisting of five (5) 36" x 24" pages, scale 1/8" = 1'-0" and dated September 2, 2021, including: A-1.0 Floor Plans; A-1.1 Floor Plans; A-2.0 Elevations; A-2.1 Elevations; and A-3.0 Sections.

- P12. Narrative for 4 State Road (Educomp Building) Proposed Mixed-Use Development - Additional Project Notes consisting of seventeen (17) pages, dated September 27, 2021.
- P13. Revised Plan Set for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of eight (8) 24" x 36" pages, scale $\frac{1}{16}" = 1'-0"$ and dated October 19, 2021 unless otherwise noted, including: A-103 OPT 1 Parking Plan Option 1; Site Plan in Tisbury, Mass prepared for 4 State Road MVY LLC by Schofield, Barbini & Hoehn, scale $1" = 20'$, dated September 27, 2021; A-105 Construction Fence/View Plan; A-1.0 Floor Plans, scale $\frac{1}{8}" = 1'-0"$; A-1.1 Floor Plans, scale $\frac{1}{8}" = 1'-0"$; 4 State Road Unit Breakdown, no scale; and A-103 OPT 2 Parking Plan Option 2.
- P14. Revised Narrative Proposal for Mixed-Use Development at 4 State Road (Educomp Building), consisting of thirty (30) pages, dated November 4, 2021.
- P15. A-106 Overlay Plan prepared for 4 State Road Vineyard Haven, MA by Delano & Co. consisting of one (1) page, scale $\frac{1}{16}" = 1'-0"$, dated November 1, 2021.
- P16. Revised Floor Plans and Elevations prepared for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of five (5) 36" x 24" pages, scale $\frac{1}{8}" = 1'-0"$ and dated December 27, 2021, including: cover page; A-1.0 Floor Plans; A-1.1 Floor Plans; A-2.0 Elevations; and A-2.1 Elevations.
- P17. Parking Options Plans for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of two (2) 24" x 36" pages, scale $\frac{1}{16}" = 1'-0"$ and dated January 5, 2022, including: A-103 OPT 1 Parking Plan Option 1 and A-103 OPT 2 Parking Plan Option 2.
- P18. Revised Lot Coverage Plan for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of one (1) 24" x 36" page, scale $\frac{1}{16}" = 1'-0"$, dated March 7, 2022.
- P19. Revised Floor Plans and Elevations prepared for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of four (4) 36" x 24" pages, scale $\frac{1}{8}" = 1'-0"$ and dated April 2, 2022, including: A-1.0 Floor Plans; A-2.0 Elevations; A-2.1 Elevations; and A-3.0 Sections.
- P20. Revised SW 1.0 Site Plan & Stormwater Plan & Sections, consisting of one (1) 17" x 11" page prepared for 4 State Road Vineyard Haven, MA by John Lolley, PE, scale $1" = 10'-0"$, dated April 5, 2022.
- P21. Revised Lot Coverage Plan for 4 State Road Vineyard Haven, MA prepared by Delano & Co. consisting of one (1) 24" x 36" page, scale $\frac{1}{16}" = 1'-0"$, dated April 12, 2022.
- P22. Revised Right Elevation consisting of one (1) 17" x 11" page, received April 21, 2022.
- P23. Revised Application Package consisting of fourteen (14) 24" x 36" pages prepared for 4 State Road Vineyard Haven, MA by Delano & Co., scale $\frac{1}{16}" = 1'-0"$ and dated May 9, 2022 unless otherwise noted, including: A-100 Existing Site Plan prepared by Schofield, Barbini & Hoehn, scale $1" = 20'$, dated September 27, 2021; A-101 Lot Coverage Plan; A-102 Parking Plan; A-105

Construction Fence Plan; A-106 Scheme Reduction Plan; A-107 Outdoor Lighting Plan; SW 1.0 Site Plan & Stormwater Plan & Section prepared by John Lolley, PE, scale 1" = 10'-0", dated May 3, 2022; SW 2.0 Stormwater Details prepared by John Lolley, PE, no scale, dated May 3, 2022; SW 3.0 Pre-Construction Stormwater Plan, scale 1" = 10'-0", dated May 3, 2022; A-1.0 Floor Plans, scale 1/8" = 1'-0"; A-1.1 Floor Plans, scale 1/8" = 1'-0"; A-2.0 Elevations, scale 1/8" = 1'-0"; A-2.1 Elevations, scale 1/8" = 1'-0"; and A-3.0 Sections, scale 1/8" = 1'-0".

2.4 Reports

- R1. Stormwater Report prepared by John Lolley PE for 4 State Road, Vineyard Haven, consisting of three (3) pages, dated July 15, 2021.
- R2. Traffic Impact Study and Access Plan for Proposed Mixed-Use Development 4 State Road, Vineyard Haven, MA prepared for the Town of Tisbury, MA and 4 State Road MVY LLC by Fraser Polyengineering Services, consisting of one hundred sixty (160) pages, dated March 2022.
- R3. Memorandum from Kurt Fraser and Keith Coleman (Fraser Polynengineering Services) regarding the Stormwater Management System Review, consisting of two (2) pages, dated March 7, 2022.
- R4. Traffic Study Addendum No. 1 from Kurt Fraser and Maaza Mekuria (Fraser Polyengineering) to Tisbury Planning Board, consisting of two (2) pages, dated April 4, 2022.
- R5. Memorandum from Kurt Fraser and Keith Coleman (Fraser Polynengineering Services) regarding the Stormwater Management System Review, consisting of two (2) pages, dated April 11, 2022.
- R6. Memorandum from Kurt Fraser and Keith Coleman (Fraser Polynengineering Services) regarding the Stormwater Management System Review, consisting of one (1) page, dated May 3, 2022.

2.5 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector with attached plans, consisting of thirteen (13) pages, received June 29, 2021.
- E2. Traffic & Parking Study for DRI 622 10 State Road prepared for the Martha's Vineyard Commission by C3 Consulting Group, consisting of nineteen (19) pages, dated October 2010.
- E3. Common Driveway Easement for Katherine Kinsman Grillo of Delano Realty Trust and Forty-One Main Street, Inc., consisting of six (6) pages, dated February 21, 2014, and recorded at the Registry of Deeds Book 1347, Page 266.
- E4. 4 State Road Proposed Mixed-Use Development Footprint Comparisons, consisting of one (1) page, dated July 13, 2021.
- E5. 4 State Road Proposed Mixed-Use Development Unit Overview, consisting of one (1) page, dated July 13, 2021.

- E6. 4 State Road Proposed Mixed-Use Development Wastewater Calculations, consisting of one (1) page, dated July 13, 2021.
- E7. Application to Town of Tisbury Wastewater Department for Service Connection/Flow Increase, consisting of one (1) page, dated July 18, 2021.
- E8. Specification sheets for lighting fixtures, consisting of six (6) pages, received August 2, 2021.
- E9. Staff Report for DRI 710 Redevelopment of Edu Comp Building, consisting of three (3) pages and dated August 6, 2021; revised to consist of five (5) pages on September 28, 2021; revised to consist of eight (8) pages on October 6, 2021; revised to consist of nine (9) pages on November 3, 2021; revised to consist of ten (10) pages on March 9, 2022; revised to consist of eight (8) pages on April 13, 2022; and revised to consist of nine (9) pages on May 11, 2022.
- E10. Massachusetts Historical Commission Project Notification Form for 4 State Road Redevelopment, consisting of sixteen (16) pages including attachments, dated August 16, 2021.
- E11. Email from Ross Seavey (Tisbury Building Inspector) to Alex Elvin regarding the first-floor determination, consisting of three (3) pages, dated August 31, 2021.
- E12. 4 State Road Proposed Mixed-Use Development First Floor Calculations, consisting of one (1) page, dated September 3, 2021.
- E13. Letter from Brona Simon of the Massachusetts Historical Commission regarding 4 State Road Redevelopment and New Construction, consisting of two (2) pages, dated September 15, 2021.
- E14. Notice of Action from Town of Tisbury Wastewater Department regarding conditional wastewater approval, consisting of one (1) page, dated September 16, 2021.
- E15. Photographs of Existing Conditions for 4 State Road Mixed-Use Development (Educomp Building), consisting of eleven (11) pages, dated September 22, 2021.
- E16. Letter from Deborah Cox (Public Archaeology Lab) to Brona Simon (Massachusetts Historical Commission) including application to conduct an intensive archaeological survey at 4 State Road, Tisbury, consisting of three (3) pages, dated September 24, 2021.
- E17. Permit to Conduct Archaeological Field Investigation by the Public Archaeology Lab, consisting of one (1) page, issued October 4, 2021.
- E18. Staff Presentation to the Land Use Planning Committee for the DRI 710 Pre-Public Hearing Review, consisting of sixty-four (64) pages, dated October 6, 2021.
- E19. Letter from the Tisbury Planning Board with concerns regarding traffic, wastewater and stormwater, consisting of two (2) pages, dated November 2, 2021.
- E20. Floor Area of Nearby Buildings using a 2009 basemap prepared by MVC Staff, consisting of one (1) page, dated November 3, 2021.

- E21. Staff Presentation to the full Commission for the DRI 710 Public Hearing, consisting of seventy (70) pages and dated November 4, 2021; revised to consist of eighty-two (82) pages on April 14, 2022; revised to consist of ninety-six (96) pages on May 12, 2022; and revised to consist of one hundred seven (107) pages on June 16, 2022.
- E22. Public Archaeology Lab Management Abstract, consisting of one (1) page, dated November 4, 2021.
- E23. Emails between the owners of 10 State Road and Xerxes Agassi, regarding potential access easements consisting of six (6) pages including attachments, dated between November 15, 2021 and January 12, 2022.
- E24. Email from Jared Meader (Tisbury Wastewater Superintendent) regarding wastewater flow, consisting of one (1) page, dated November 16, 2021.
- E25. Letter from the Massachusetts Historical Commission regarding the Public Archaeology Lab archaeological report, consisting of two (2) pages, dated November 18, 2021.
- E26. Email from Xerxes Agassi to Pat Harris (Tisbury Planning Board), regarding updated traffic numbers, consisting of three (3) pages, dated December 17, 2021.
- E27. Letter from Mary Cataudella, Attorney for the Applicant, to the Tisbury Planning Board regarding easements between 4 State Road and 5 Beach Street, consisting of four pages with attachments, dated January 4, 2022.
- E28. Email from Xerxes Agassi to Alex Elvin with attached Energy Mitigation Proposal, consisting of three (3) pages, dated January 6, 2022.
- E29. Letter from Xerxes Agassi to Katherine Kinsman Maynard regarding 5 Beach Street & 4 State Road Access, consisting of two (2) pages, dated January 7, 2022.
- E30. Emails between the owners of 10 State Road and Xerxes Agassi, regarding potential easements consisting of five (5) pages, dated between January 7 and February 1, 2022.
- E31. Letter from Xerxes Agassi to Joe Grillo and Erik Hammarlund regarding 10 State Road & 4 State Road Access, consisting of two (2) pages, dated January 10, 2022.
- E32. Memorandum of Understanding between Vineyard Wind 1 LLC and Delano & Co. LLC, regarding workforce housing, consisting of five (5) pages, dated January 21, 2022.
- E33. Revised Renderings, consisting of nine (9) 56" x 37" pages, received January 28, 2022.
- E34. Email from Xerxes Agassi to Alex Elvin regarding the peer review of traffic study for 4 State Road, consisting of two (2) pages, dated January 31, 2022.

- E35. Email from Jared Meader (Tisbury Wastewater Superintendent) to Alex Elvin regarding the extension of the conditional wastewater approval, consisting of one (1) page, dated March 4, 2022.
- E36. Emails between Jared Meader (Tisbury Wastewater Superintendent), Alex Elvin and Xerxes Agassi regarding the extension of the conditional wastewater approval, consisting of three (3) pages, dated March 31, 2022.
- E37. DRI 710 Staff Report Addendum regarding the Traffic Impact & Access Plan submitted by Fraser Polyengineering Services, consisting of three (3) pages, dated April 14, 2022.
- E38. DRI 710 Redevelopment of Edu Comp Building - 4 State Road Applicant's Response to Memo regarding MVC questions during the public hearing on April 14, 2022, consisting of twenty-eight (28) pages, dated April 20, 2022.
- E39. Letter from Mary Cataudella, Attorney for the Applicant, to Adam Turner regarding the access easement for 4 State Road and 10 State Road, consisting of nineteen (19) pages including attachments, dated May 3, 2022.
- E40. Email from Xerxes Agassi to Alex Elvin regarding short term rental restrictions in lease language, consisting of two (2) pages, dated May 5, 2022.
- E41. Email from Xerxes Agassi to Alex Elvin regarding the cherry tree on State Road with attached section of a landscaping plan, consisting of two (2) pages, dated May 10, 2022.
- E42. Draft Declaration of Trust for Condominiums by 4 State Road MVY, LLC, including the draft Condominium Rules and Regulations, consisting of twenty-nine (29) pages, dated May 12, 2022.
- E43. Draft Master Deed of the 4 State Road Condominium, consisting of twenty-one (21) pages, dated May 12, 2022.
- E44. Letter from Erik Hammarlund, representing the 10 State Road Condominium Trust, regarding the easement between 4 State Road and 10 State Road, consisting of eleven (11) pages, dated June 16, 2022.
- E45. Email from Jared Meader (Tisbury Wastewater Superintendent) to Alex Elvin regarding the extension of the conditional wastewater approval, consisting of one (1) page, dated June 28, 2022.
- E46. DRI 710 Redevelopment of Edu Comp Building - 4 State Road Applicant's Response to Memo regarding MVC questions, with responses, consisting of five (5) pages, dated June 29, 2022.
- E47. Letter from March Cataudella, Attorney for the Applicant, response to letter from Erik Hammarlund dated June 16, 2022 (Exhibit 44), consisting of twenty-two (22) pages with attachments, dated June 30, 2022.

- E48. Staff Presentation to the Land Use Planning Committee for the DRI 710 Post-Public Hearing Review, consisting of forty-seven (47) pages, dated July 5, 2022.
- E49. Two (2) letters of support from the following organizations: Martha's Vineyard Hospital, dated June 23, 2021 and Vineyard Power, dated December 23, 2021.
- E50. Eleven (11) Letters stating concerns over aspects of the proposal from the following citizens: Lynn Buckmaster-Irwin, June 15, 2022; Jeffrey DuBard, April 28, 2022; Dawn Elise Evans, June 7, 2022; Katherine Grillo, October 7, 2022; Doreen Kinsman, June 3, 2022; Kristina Kinsman-Maynard (2), November 4, 2021 and May 3, 2022; Jill Lane, June 7, 2022; Joan Shea, October 15, 2021; Gretchen Snyder, November 3, 2021; and Kate Warner, October 17, 2021.
- E51. Eight (8) letters of opposition from the following citizens: Joseph Grillo, June 30, 2022; Erik Hammarlund, June 30, 2022; Jill Hansen (2), January 16 and June 30, 2022; Doreen Kinsman, October 4, 2021; Kristina Kinsman-Maynard (2), November 1, 2021 and April 6, 2022; and Joan Shea, January 31, 2022.
- E52. Minutes of the Commission's Land Use Planning Committee Pre-Public Hearing Review,
- E53. Minutes of the Commission's Public Hearing, October 7, 2021.
- E54. Minutes of the Commission's Continued Public Hearing, November 4, 2021.
- E55. Minutes of the Commission's Continued Public Hearing, April 14, 2022.
- E56. Minutes of the Commission's Continued Public Hearing, May 12, 2022.
- E57. Minutes of the Commission's Continued Public Hearing, June 16, 2022.
- E58. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review,
- E59. Minutes of the Commission's Deliberation and Decision, July 7, 2022.
- E60. Minutes of the Commission's Approval of the Written Decision, *August 4, 2022.*

2.6 Summary of Testimony

The following gave testimony during the public hearing on October 7, 2021:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Traffic presentation by Mike Mauro, Transportation Program Manager.
- Presentation of the project by Xerxes Agassi, Applicant.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
 - Joseph Grillo, abutter;
 - Erik Hammarlund, abutter; and
 - Jill Hansen, abutter.

The following gave testimony during the continued public hearing on November 4, 2021:

- Updated Staff presentation by Alex Elvin, DRI Coordinator.
- Updated Traffic presentation by Mike Mauro, Transportation Program Manager.
- Presentation of the revised project by Xerxes Agassi, Applicant.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
 - Joseph Grillo, abutter;
 - Kristina Kinsman-Maynard, abutter;
 - Erik Hammarlund, abutter; and
 - Jill Hansen, abutter.

The following gave testimony during the continued public hearing on April 14, 2022:

- Updated Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the revised project by Xerxes Agassi, Applicant.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
 - Erik Hammarlund, abutter;
 - Brian Smith, speaking as a private citizen;
 - Joseph Grillo; and
 - Jill Hansen, abutter.

The following gave testimony during the continued public hearing on May 12, 2022:

- Updated Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Xerxes Agassi, Applicant.
- Presentation of the Traffic Report by Mike Mauro, Transportation Program Manager.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: Erik Hammarlund, abutter.

The following gave testimony during the continued public hearing on June 16, 2022:

- Updated Staff presentation by Alex Elvin, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public:
 - Erik Hammarlund, abutter;
 - Kristina Kinsman-Maynard, abutter;
 - Doreen Kinsman, abutter;
 - Jill Hansen, abutter.
- Closing statement by Xerxes Agassi, Applicant.

3. FINDINGS

3.1 Project Description

The proposal is to gut-renovate the existing 7,920 ft² building and construct a 13,062 ft² addition to the south (total of 20,982 ft²). The renovated portion would have three floors, and the addition would have four floors, with the top floor about 31% smaller than the floor below (2,482 ft² compared to 3,589 ft²). As proposed, the bottom floor (extending across both portions) would have three office condo units totaling 2,933 ft² (including storage space) as well as bike storage and garage space at the rear of the building. The exterior of the addition is intended to match the existing brick structure.

The site slopes away from State Road, so the northern portion of the bottom floor would be below grade, although the front of the site would be excavated to create a storefront and entry facing the road. The areas along the sides of the building would also be excavated to allow for additional access and windows.

The upper floors will have 14 one- and two-bedroom residential condo units totaling 11,931 ft², including one affordable unit restricted to 80% Area Median Income, one community housing unit restricted to 150% AMI for 10 years, nine workforce housing units, and three market rate units. The units would range in size from 571 ft² to 1,513 ft², with a total of 22 bedrooms. The roof would serve as a garden terrace and to house the HVAC and other mechanical equipment. The top floor would include private terraces for some of the units, and the roof would include a private deck for one of the fourth-floor units.

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety, and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration, and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

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

3.3 Benefits and Detriments

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

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

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

The Commission finds that the probable detriments of the project outweigh the probable benefits, as described below. With respect to impacts upon the environment (Section 15(b) of the Act) and impacts upon persons and property (Section 15(c) of the Act), the Commission finds the project would have a detrimental impact. The Commission finds that the project would not adversely affect the provision of municipal services or the burden on taxpayers, would not unduly burden existing public facilities, and would generally not interfere with local, regional, or state planning objectives. With respect to low- and moderate-income housing, the Commission finds the project would have a beneficial impact, but also notes that while affordable, community, and workforce housing are essential on the Island, the workforce housing as offered would be limited to seven years, and the community housing to 10 years. The Commission also finds the building itself would be out of scale and character with the area.

A2. The Commission finds that the proposed development would not have a material impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Stormwater and Water Quality, the Commission notes that the property currently has no stormwater system and the project would include a stormwater system designed to manage at least a 25-year storm. The Commission also notes the following:

- The existing paved driveway and compact dirt/asphalt parking area would be replaced with pea stone set on sand hardener (MVC staff considers both surfaces to be semi-permeable), while roof area will increase by about 3,600 ft². Accounting for the semi-permeable surfaces (this was done by staff), the impervious surface area on the lot would decrease from about 14,000 ft² to 13,000 ft².
- A stormwater management plan (designed for at least a 25-year storm) was revised in April and May in response to peer review and additional comments by Fraser Poly-Engineering Services (FPES) on behalf of the Planning Board, and FPES provided final comments confirming the adequacy of the system.
- The plan includes a concrete, stone-clad retaining wall at the rear of the property to help limit erosion and spill-over into Veterans Park to the south.
- The property is within the coastal watershed, in the proximity of Vineyard Haven Harbor.
- The property has paid a betterment for 652 gallons of wastewater flow per day (GPD) to the town. The applicant applied to the town in 2021 to connect to the sewer with the 652 GPD, and an additional 1,926 GPD, for a total of 2,578 GPD. The town is working to upgrade its treatment capacity, but the town Wastewater Treatment Facility is at or near capacity.

- The Tisbury Wastewater Department issued a letter of conditional approval to the applicant in September 2021. The 22 bedrooms would require an allocation of 2,420 GPD, and the proposed office uses would require 218 GPD, for a total of 2,638 GPD. The initial 120-day conditional approval expired on Dec. 30, 2021, and the Wastewater Department has provided three extensions, most recently in June.
- The proposed rooftop garden would help reduce atmospheric nitrogen loading on the property.
- The system, like all other systems currently and in line with the industry standard, would be constructed largely out of plastic, which could leach particles into the environment over time.

With respect to Energy, the Commission notes the following:

- The Applicant has proposed mini-splits for heating and cooling, electric hot water tanks within each unit, and electric clothes drying, with propane for cooking and possibly for fireplaces.
- The applicant is also exploring options for a backup generator onsite, which may require approval from the Tisbury Conservation Commission, depending on the location.
- Energy loads on the property would increase compared to previous conditions.
- The applicant proposes eight electric vehicle charging stations.
- The applicant will contribute \$25,000 to the Vineyard Power Development Fund to support community-based solar and battery storage systems on the Island, which would enhance grid resilience and provide low-income ratepayer benefits to the community.

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

With respect to Traffic and Transportation (considered a primary factor in the decision), the Commission finds the project would have a neutral impact, noting that the current parking lot has been used informally by the public, including as overflow parking for Veterans Park, so that option would be eliminated, although bike and pedestrian infrastructure onsite would improve. The Commission also notes the following:

TRIP GENERATION

- The property is located in the vicinity of shops, public transportation, bike paths, and other amenities, which would reduce the need for local automobile trips.
- A traffic analysis by Fraser Poly-Engineering Services (FPES) concludes that the project would lead to a slight reduction in traffic compared to previous conditions, would not adversely affect the five area intersections (Edgartown/State Roads, Look Street/State Road, Main Street/State Road/Beach Street, Five Corners, and State/Causeway Roads), and the impact on Level of Service (LOS) would be insignificant. However, the analysis also notes existing challenges associated with the crosswalks (including ADA compliance) and limited site distance for vehicles turning right out of the site, and proposes various mitigation for the applicant, town, and/or state to consider.

ACCESS

- The existing driveways along State Road would be reconfigured and continue to provide ingress immediately to the west of the building and egress immediately to the east.
- The abutting property at 10 State Road to the west was required to record an easement with 4 State Road as part of the MVC approval of DRI 622 in 2013. The easement was recorded, but does not align directly with the existing driveway for 4 State Road, and according to the applicant does not include egress. An informal agreement between 4 and 10 State Road had allowed 10 State Road to continue using the driveway, and to exit through 4 State Road. Efforts by the current applicant to formalize that arrangement were unsuccessful and the applicant plans to enforce the recorded easement.
- An informal agreement between 4 State Road and 5 Beach Street to the east had been in place to allow 5 Beach Street to access parking spaces via 4 State Road, and to allow the 4 State Road exit to cross over a portion of 5 Beach Street. Efforts to formalize that agreement were also unsuccessful, and the applicant plans to realign the exit driveway so that it no longer crosses 5 Beach Street. This has required the owner of 5 Beach Street to reconfigure their vehicle access and parking.
- The project has resulted in the abutters at 5 Beach Street establishing their own access, which would be immediately east of the proposed egress for 4 State Road (two consecutive access points on Beach/State Road, also coinciding with crosswalk).
- There is currently a dispute between the owner of 10 State Road and the Applicant concerning an easement on the west side of the property. That dispute, which may bear on ingress to the subject property, has not been resolved.

PARKING

- The site would have 22 parking spaces (including the four garage spaces, two handicapped spaces, and a delivery space) to the rear and along the west side of the addition, with 1.3 spaces per unit and relevant signage.
- Tenants would be offered 24-hour vehicle permits, or less expensive commuter permits that only allow parking at certain times. For example, tenants who commute to work on a regular basis could opt for a nighttime-only pass, which would increase the number of parking spaces available during the day. Tenants would also be offered guest passes for visitors and clients.
- The existing parking area has been used informally as overflow parking for Veterans Park, so that function would be eliminated.

BIKE AND PEDESTRIAN TRAFFIC

- The project would create 14 residential units and three office units, which will lead to an increase in foot traffic in the immediate area, including the intersection of Main Street and State Road. There are currently two crosswalks at the intersection.
- The Applicant has stated that the site will also be utilized to encourage access to Veterans Memorial Park to the south, which may further increase foot traffic. Two sets of stairs currently provide access to the park from the parking lot. The plans call for the access points to be improved, including an ADA-compliant ramp/bike path with required rest areas every 30 feet.

- A storage room for 18 bicycles will be located on the bottom floor of the building.
- Businesses located in the building would be required to provide VTA passes to employees.
- The project would be within walking distance of businesses and other amenities.

With respect to Character and Identity (considered a primary factor in the decision), the Commission finds the project would have a significant detrimental impact due largely to its size and visibility. The Commission also notes the following:

- The current brick building with metal roof stands prominently at the intersection of Main Street and State Road, and is architecturally distinct from the surrounding wooden buildings.
- The proposed building is about 165% larger than the existing building, and would be one of the larger buildings in the immediate area, overwhelming the neighbors to the east and west.
- The addition to the south would be similar in style to the existing building, but with shorter windows, four floors instead of three, and stone exterior on the bottom floor. The addition would not be visible when facing the front of the building directly, but would be visible at an angle, and would obscure views to Veterans Park.
- The existing metal roof and rooftop masonry would be repaired to match the original.
- The project site abuts Veterans Park to the south (with proposed access by foot and bicycle) and the site is partially screened by vegetation from that direction.
- The Applicant has stated that making the addition any smaller would impact the number of residential units, and create grading issues that would affect ADA accessibility and alignment with abutting properties, and possibly disqualify the lower level as a first floor.
- The 2015 Tisbury Vision Plan identifies such goals as protecting the scale and character of Vineyard Haven, and ensuring that new buildings “fit harmoniously into the existing town fabric.” The plan also includes a goal of connecting and integrating “neighborhoods, parks, and open spaces through a network of safe walking and biking routes.”
- The Tisbury Planning Board has noted that the project would create visual impacts on abutters and the neighborhood.

With respect to Economic Development (considered a primary factor in the Decision), the Commission finds the project would have a neutral impact, in part because it would create new commercial space while eliminating a larger amount of potential commercial space on the site. The Commission also notes the following:

- The project would create three office units in Vineyard Haven, in the vicinity of Main Street and decrease the potential commercial space on the site from about 7,900 ft² to 2,900 ft² (about a 63% reduction). Hours of operation would be consistent with other businesses in the area.
- The side entrances to the commercial area would be handicapped-accessible.
- The town planning board has discussed whether the proposed reduction in available commercial space is appropriate for the B1 district, and whether more of the existing structure could be designated as commercial instead of residential.

- The proposed residential units would likely have a beneficial impact on the surrounding businesses, particularly retail shops and restaurants.
- The anticipated number of new jobs created, and hours of operation, for the three commercial units are not known at this time.
- The project would generate additional commercial and residential property taxes for the town of Tisbury.
- The Tisbury Planning Board has noted that assigning large wastewater allocations to residential projects may hinder future business development in town.

With respect to Island Housing Needs not including low- and moderate-income housing (considered a primary factor in the decision), the Commission finds the project would have a beneficial impact. However, since the nine workforce housing units as offered would only be restricted as workforce housing for seven years, the benefit would be of short-term duration and the need for workforce housing is a longer-term imperative. The Commission also notes the following:

- As proposed, 11 of the 14 residential units would be designated as year-round.
- Martha's Vineyard Hospital has stated its intent to lease some of the units for hospital workers (likely three, accounting for plan revisions), and the applicant has signed an MOU with Vineyard Wind, which intends to lease 7-10 of the units as housing for future wind farm workers, pending approval of both the current DRI and a proposed Vineyard Wind maintenance facility on Beach Road, which is being reviewed as DRI 81-M3.
- As proposed, none of the workforce, affordable, or community housing tenants would be allowed to sublet their units as short-term rentals, although relevant language in the condominium documents had not been finalized. Three units would be unrestricted.
- A draft condominium declaration of trust and master deed, including possible language pertaining to short-term leases of the workforce units, have been provided.
- All residential units will be handicapped-accessible via the side entrances on the ground floor and an elevator to the upper floors.

With respect to Impact on Abutters (considered a primary factor in the decision), the Commission finds the project would have a detrimental impact, noting the following:

- Eighteen letters from the public were submitted, largely from abutters who raised concerns that the project is too large and out of character with the Island, and that it does not have enough parking or affordable units. Other concerns focused on the ingress/egress, whether additional commercial units are justified given the availability of commercial space on Main Street, whether additional sewer flow should be allocated for the project, and how the project would affect drainage in the area.
- The Tisbury Planning Board has noted that the project would create visual impacts on abutters and the neighborhood.

With respect to Landscaping, the Commission finds the project would have a detrimental impact, noting the following:

- The Applicant has stated that a mature Sargent cherry tree at the front of the site will remain, although plans for the recessed entryway and regrading of the exit driveway will impact the root system. (The recessed area would be about 7'4" below grade, and the proposed egress driveway would be about 1'6" below grade.)
- The applicant has received quotes from Island arborists Bob Hagerty (to apply treatments to help protect the tree from impacts resulting from the project) and Ian Jochems (to evaluate the tree and make recommendations for how best to mitigate any impacts from the project). Hagerty also confirmed with staff that if hired he would work with the applicant to save the tree, but that the full impact of the project might not be apparent for 5-8 years.
- An existing tree in the parking lot behind the building would be removed as part of the project.
- The applicant has stated that two mature trees on the eastern property line would be protected during construction, following the recommendations of an Island arborist, and that the replacement of the asphalt driveway with semi-permeable material would benefit those trees.
- The realigned exit driveway at 4 State Road would slightly reduce the existing landscaped area at the front of the building.
- Cedar trees on the western edge of the property would also be impacted by the development.

The Commission also notes the following with respect to Persons and Property:

Cultural Resources:

- The site is within a sensitive archaeological resource area known as the Vincent Site.
- A management abstract by Public Archaeology Laboratory (PAL) following an intensive archaeological survey in October states that the survey revealed 410 artifacts, mostly located within fill or disturbed soil, including artifacts that are likely part of the Vincent Site, but no "potentially significant archaeological deposits".
- PAL recommends that final plans limit below-grade disturbance to less than a certain depth, and if any impacts are proposed below that level, additional excavation be conducted. (The proposed stormwater chambers would require excavation about eight feet below grade.) The recommendations also include providing final plans to PAL and MHC for review and comment. MHC further recommends that "the project be modified to include construction only within filled and/or disturbed soils where feasible," that updated plans showing shallow construction be provided to MHC and PAL for assessment, and that if construction is required below existing filled or disturbed soils, a supplemental (locational) intensive survey be carried out.

Construction management

- The Applicant anticipated construction beginning in fall 2022 and lasting about 24 months, with limited activity in the summer season. Construction of the commercial units would begin only after the commercial users were identified. Staging and parking for construction would take place onsite. The existing building would be gutted, followed by site work, pouring of footings and retaining walls, and framing. At that point, additional staging would occur within the

building footprint. The Applicant stated that abutters would be able to access their properties during construction.

Night lighting

- A lighting plan shows low-level down-lighting along the driveways and at the front of the site (19 locations), recessed downlighting above the side entrances (three locations), wall-mounted up-down lighting along the sides of the building (33 locations), decorative wall sconces (five locations), gooseneck decorative downlighting (10 locations) at the front and back of the building, and lamp stands in the parking area and along the path to Veterans Park (six locations). Spec sheets for all but the lamp stands were provided, and the Applicant stated that the lamp stands will match others maintained by the town.

Noise

- HVAC condensers would be relocated from the side of the building to the roof.

A4. The Commission finds that the project would increase the supply of needed low- and moderate-income housing for island residents (Section 15(d) of the Act; considered a primary factor in the decision).

The Commission notes the following:

- One affordable unit would be restricted to households earning up to 80% AMI, and would be exempt from condo fees. The affordable unit would be furnished, with two bedrooms. Further proposed restrictions on the affordable unit were developed in consultation with staff.
- One of the workforce units would be restricted to households earning up to 150% of the Area Median Income (AMI) for 10 years.

A5. The Commission finds that the proposed development would not adversely affect the provision of municipal services or burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

The project will likely not have a significant impact on town services such as police and fire, since the development is located in a densely developed mixed-use / commercial area.

A6. The Commission finds that the proposed development would likely increase the burden on existing public facilities or those that are to be developed within the succeeding five years (Section 15 (f) of the Act).

The project will increase the burden on the town wastewater treatment system, which is at or near capacity, but would otherwise likely not have a significant impact on public facilities.

A7. The Commission finds that the project as proposed generally does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

- The project generally aligns with the Island Plan, including sections 4 (Built Environment), 8 (Housing), and 9 (Transportation).
- Among other things, the Island Plan encourages compact mixed-use development, the preservation of older buildings, and the development of affordable and community housing.
- However, the Island Plan also discourages “buildings that go to the limit of zoning regulations,” or that are “too big or otherwise don’t fit their surroundings.”
- The 2015 Tisbury Vision Plan identifies such goals as protecting the scale and character of Vineyard Haven, and ensuring that new buildings “fit harmoniously into the existing town fabric.” The plan also includes a goal of connecting and integrating “neighborhoods, parks, and open spaces through a network of safe walking and biking routes.”

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

- The bottom floor of the building as proposed appears to qualify as a first floor and would therefore comply with Tisbury zoning bylaw 05.12, which states that residential uses are not allowed on the first floor of buildings in the B1 district. (The first floor as proposed would be the commercial units.)
- The first floor would have an average height of 8.77 feet, which is more than the six feet required under the MA Building Code. This accounts for portions of the building on the north and west sides that would still be mostly below grade.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project in general advances the Commission’s land development objectives, as outlined in Section A7 of this Decision.

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

The project is consistent with local zoning, as outlined in section A8 of this Decision.

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

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

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

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on July 7, 2022, and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations, participated in the decision on July 7, 2022:

Voting to deny the project without prejudice: Jeff Agnoli, Christina Brown, Jay Grossman, Fred Hancock, Michael Kim, Kathy Newman, Ben Robinson, Linda Sibley, Christine Todd.

Voting against the motion: Trip Barnes, Joan Malkin, Ernie Thomas, and Jim Vercruysse.

Recused: Doug Sederholm.

Based on this vote, the Commission denied the application for the project as a Development of Regional Impact without prejudice.

This Written Decision is consistent with the vote of the Commission on July 7, 2022, and was approved by a vote of the Commission on August 4, 2022.

5. CONDITIONS

The Martha's Vineyard Commission hereby denied the project which may not proceed under any condition.

6. CONCLUSION

6.1 Permitting from the Town

The permit-granting authorities of the Town of Tisbury shall not grant the request for approval of the Applicant's proposal. The project is denied without prejudice.

6.2 Notice of Appellate Rights

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

6.3 Length of Validity of Decision

The denial of this proposal is permanent.

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6.4 Signature Block


Joan Malkin, Chair

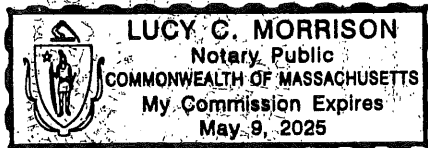
15 Sept. 2022
Date

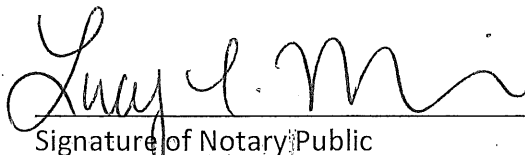
6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 15th day of September, 2022, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.




Signature of Notary Public

Lucy C. Morrison
Printed Name of Notary

My Commission Expires May 9, 2025

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: September 15, 2022

Deed: Book 83, Page 227 Certificate No: 15264

Document Number: 92784

