

FOR SETTLEMENT PURPOSES

VIA HAND DELIVERY

November 15, 2023

Johanna Schneider, Esq.
Hemenway & Barnes LLP
75 State Street
Boston, MA 02109

Kim, et al. v. Martha's Vineyard Commission, et al.,
Dukes County Superior Court Civil Action No. 2274CV00042

Dear Johanna:

On behalf of my clients, Lisa Kim and Eunu Chun, plaintiffs in the above-referenced matter (the "Appeal"), I write to present a proposal to settle the Appeal upon the issuance of a decision by the Martha's Vineyard Commission (the "MVC") approving as a Development of Regional Impact ("DRI") my clients' proposed demolition and rebuild of their home (the "Project") located at 7 Arlington Avenue, Oak Bluffs (the "Property"). As you know, this offer comes as the result of extensive settlement discussions we have had with you, my clients' consultants, and consultants for the MVC.

As a result of those discussions, my clients have proposed substantial and material changes to the proposal previously submitted to the MVC; which the MVC denied in October 2022; and which is the subject of the above-referenced Appeal. My clients make this proposal in good faith, but without waiver of their rights in the above-referenced Appeal and reserving all rights with respect thereto. However, as will be set forth below, my clients believe that the revised Project presented herein, and the materials enclosed herewith address the concerns which resulted in the denial of the prior proposal. Accordingly, we believe that what is presented herein provides the basis for a mutually satisfactory settlement of the above-referenced Appeal upon the issuance of a decision approving the Project as revised.

Over the past year, consultants for my client and consultants for the MVC (whose services were paid for by my clients) prepared memoranda addressing various matters, including the history of the existing home and various structural and building code matters that affect it. The submissions of my clients' historic preservation consultant at Epsilon Associates, Inc., my clients' structural consultant, Casey Decker, PE, and my clients' architect, Chuck Sullivan, are enclosed. Those submissions were presented to the MVC's consultant for structural and construction matters, Benjamin Souza, P.E., and to Eric Dray, the MVC's consultant with respect to historic considerations and design. Messrs. Souza and Dray conducted inspections of the Property and house and then prepared and submitted peer review reports.

Epsilon concluded that any historical significance that my clients' home may have had was lost when the structure was severed from the Palmer Villa House over a century ago and when the building was moved to its current site. At that time, the structure was significantly modified and stripped of its

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exterior ornamentation with the resulting loss of architectural integrity and historical significance. Mr. Dray, the Commission's preservation consultant, also noted this fact, observing in his report that the existing house was substantially altered when, some 100 years ago, it was severed from the Palmer Villa House and moved to its current location. Accordingly, Mr. Dray used the current form and design of the house as the baseline for evaluating design considerations as they relate to the proposed replacement house. Mr. Dray ultimately concluded that the replacement house proposed by the revised plans for the Project is more reflective of the existing house than the original proposal and would better harmonize with the other homes in the neighbourhood.

My client's structural consultant, Casey Decker, PE, concluded that the existing house was severely compromised by serious structural issues and that substantial work would be necessary to address dangerous or substandard conditions and to create a code compliant building. Mr. Souza agreed with Mr. Decker that addressing issues with the existing house would require extensive work, including new floors, a new roof and new exterior wall framing, and that addressing the many structural and other deficiencies would be "difficult" and would "considerably reduce" the amount of the current structure that could be preserved and would considerably increase the new construction required such that a renovation would result in very little preservation of the existing structure.

My clients' architect, Chuck Sullivan, noted that the Property and house are not within an historic district and therefore any renovation or reconstruction would need to comply with current building codes. He further noted, substantially for the reasons stated by Mr. Souza, that it is "virtually impossible" to achieve code compliance and a home that is safe, comfortable, energy efficient and accessible through a renovation, and, accordingly, a demolition and rebuild is warranted.

Putting the submissions of the historic preservation consultants together with those of the structural consultants and architect, the following conclusions result: (1) the home has long ago lost any historic significance; (2) addressing the many structural issues that affect the home would require the home to be brought up to current building code, and this, in turn, would result in demolition of virtually the entire structure with very little possibility of preserving any significant portions of the existing home; (3) the proposed replacement structure is faithful to and in keeping with the design and look of the existing home in terms of design, massing and ornamentation; and (4) accordingly, the proposed demolition and rebuild is warranted and appropriate.

Several months ago, an initial set of revised plans for the Project was shared with the MVC's consultants. The initial revised plans proposed certain modifications to the Project as originally proposed to address concerns the Commission expressed during its review of the original proposed project. Those changes included matters from massing to trim details, all with an eye to replicating as closely as possible the form, massing, and look of the existing structure. These changes included:

1. Reduction of Footprint

The revised plans entail a substantial reduction in overall footprint and square footage from 4,255 to 3,602.

2. Redesign of Rooflines

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The plans were revised to minimize and more closely reflect the scale and design of the existing structure; and

3. Relocation of the Structure.

The revised plans relocate the structure further from the property line to minimize impact on neighbouring property.

After their review of these revised plans, Mr. Dray, Adam Turner, MVC Executive Director, and Fred Hancock, an MVC Commissioner, suggested a few additional modifications.

In response, my clients and their team made changes to the design of the Project as suggested by Messrs. Dray, Hancock and Turner, including the following:

1. Changes to the South Elevation Cross-Gable

The plans now propose the addition of a second cross-gable bay in the same approximate location as the current cross-gable bay to reestablish the complexity of roof forms on the section of roof visible from East Chop Drive.

2. Changes to the Size and Shape of the Tower Element

The Tower has been revised from a rectangular shape, and has been made smaller and more square to recreate the shape of the existing Tower element.

3. Changes to the Tower Design

The Tower roof has been redesigned to add deeply-projecting open roof eaves that better replicate the Tower roof on the existing structure.

4. Changes to Roof, Eaves and Gable Overhangs

All roof, eave, and gable overhangs have been increased to match the depth of existing roof lines.

5. Removal of Cross-Bracing

The cross-bracing on the gable bay on the north elevation has been eliminated, making it similar in design to the existing dormer. As not all gables have a clipped roof, this gable remains a full gable to accentuate the main entry.

6. Chamfered Posts.

The “turned” posts have been replaced with “chamfered” posts to reflect the post style and design of the existing house.

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7. Re-Use of Brackets.

The existing brackets on the South elevation, one of the more visible ornamental features from East Chop Drive, will be re-used on the second-floor balcony in place of the posts shown in the previous proposal.

8. Unfinished Basement.

The previous proposal included finished basement space. The plans submitted with this settlement offer show an unfinished basement for mechanicals and storage only, thereby eliminating 856 square feet of living area from the Project.

I enclose the current plans for the revised Project (the "Settlement Plans") which reflect the previous changes to the Project and the additional changes suggested by the MVC team as summarized above, and which we offer along with other matters discussed below as a proposed basis for settlement of the Appeal.

Along with the enclosed plans, and the consultants' reports and communications, I also enclose my clients' offer sheet which details the various items to which my clients are willing to commit with respect to the Project and which will have environmental and other benefits for the Property, my clients' immediate neighbours, and the community at large. A materials list is also included. The materials list demonstrates my clients' commitment to creating a new building that will closely reflect the existing structure while employing a sustainable and environmentally sensitive construction strategy.

My clients and I understand that you will present this letter and the enclosed materials to the Commission as our offer to settle the above-referenced litigation upon the issuance of a DRI decision approving the Project as revised on the enclosed plans and on the offers made herein. We understand that it is the Commission's intent to notice a public hearing on this offer of settlement and that this letter and the enclosed materials will constitute the written record before the Commission. We further understand that the Commission will hold a public hearing to receive testimony regarding and to review and to consider this offer of settlement under the demolition guidelines and standards that were applicable to the decision that is the subject of the Appeal. Assuming that the Commission votes to approve the Project on terms and conditions acceptable to my client; the Commission issues a DRI decision approving the Project; and the Commission files such decision with the Town of Oak Bluffs and other permit granting bodies as required by law, my clients will file a voluntary dismissal of the Appeal.

Finally, it is our understanding that the Commission intends to schedule this matter for hearing on December 14, 2023. I shall look forward to hearing from you regarding scheduling and am available to discuss any other matter you should care to discuss.

Johanna Schneider, Esq.
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Sincerely



Kevin P. O'Flaherty

Enclosures

cc (via email): Ms. Lisa Kim
 Mr. Eunu Chun