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# Martha's Vineyard Commission

## DRI 3 Uncas Avenue Demolition & 40B Proposal Staff Report – 2024-4-4

### 1. DESCRIPTION

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- 1.1 **Owner:** Flowerwood, LLC
- 1.2 **Applicant:** Flowerwood, LLC
- 1.3 **Applicant's Agent:** Robert Sawyer
- 1.4 **Applicant's Agent:** Attorney Jay Talerma of Mead, Talerma, & Costa, LLC
- 1.5 **Project Location:** 3 Uncas Avenue, Oak Bluffs
- 1.6 **Proposal:** Demolition of a 19<sup>th</sup> Century, MACRIS-listed dwelling and an adjacent, 20<sup>th</sup> Century studio, to make way for an apartment building and a drive through ATM. Also, the creation of a rentable storage space and nine parking spaces.
- 1.7 **Zoning:** Residential
- 1.8 **Local Permits/Reviews:** Copeland Plan Review Committee, Cottage City Historic District Commission, Oak Bluffs Building Department, Oak Bluffs Fire Department, Oak Bluffs Planning Board, Oak Bluffs Wastewater Department & Oak Bluffs Zoning Board of Appeals
- 1.9 **State Permits:** Massachusetts Historic Commission (MACRIS-listing) & MassHousing (40B Application)
- 1.10 **Surrounding Land Uses:** To the South, the Project Site abuts a Bowling Alley owned by the Sawyer Family through MV Bowl, LLC see DRI 645, 645 M, 645 M2 645 M3, 645 M4, 645 M6, & 645 M7). The Bowling Alley site is also MACRIS listed property—the former site of the Graves Machine and Tool Company and the Ambler B. Wormley Texaco Gas Station. To the West, the Project Site fronts Hiawatha Avenue. To the North, the Project Site fronts Circuit Avenue. To the East, the Project Site fronts Uncas Avenue.
- 1.11 **Recent Project History:**
  - In a January 27, 2014 email to the Commission regarding bowling alley development, Alison Stewart, one of the former owners of the Stephen Flanders House, provided a bit of family house history: “My sister and I are the owners of 3 Uncas Avenue, parcel 156, the residential property next to the proposed bowling alley site,” Stewart wrote. “Our parents, both recently deceased and interred in the OB cemetery, bought 3 Uncas Avenue in 1963 from the [Matell] family who used to own the 5 & 10 store on Circuit. It has been in our family for 50 years The property is now in the Estate of Carol G. Stewart. It had been in the estate of Joseph T. Stewart Jr., our father who died two years before our mom. My sister and I are currently the executors of the estate and have stayed in the house as recently as last August.”
  - In 2015, the Larkin B Reeves Family Trust purchased the property. On or about November 19, 2018, the Larkin B Reeves Family Trust sold the property to Flowerwood, LLC.
  - Authorized occupation of the dwelling appears to have limited from 2015 onward.
  - Oak Bluffs Police reports show squatters and vandals have been problematic at the dwelling (see Character and Identity and Social Development for more details).

- According to Reeves, the Stephen Flanders House was furnished and rented in the summer of 2016 to “students”.
- Also in 2016, according to a 2016 Vineyard Gazette article, the Applicant’s Agent for DRI 744, Robert Sawyer, made an attempt to change the 3 Uncas Avenue zoning from residential to commercial with a short-notice warrant article. The article apparently failed and no zoning change appears to have occurred.
- Records indicate there has been some investor cross pollination between MV Bowl, LLC, which owns the abutting bowling alley property, and the Project Site. Larkin Reeves (the individual), who is/was a trustee of the Larkin B. Reeves Family Trust, appears on the MV Bowl, LLC annual reports filed with the Commonwealth between 2014 and 2018. MV Bowl, LLC, is the holding company for the bowling alley and eatery abutting the Project Site. Robert Sawyer appears on the same MV Bowl, LLC filings from 2014 to 2023. Michael Sawyer appears on the same filings from 2015 to 2023 and he, along with Robert Sawyer appear on the Flowerwood, LLC filings. Larkin Reeves, the individual, appears in 2017, 2018, 2019, & 2020 annual reports as a manager of Flowerwood, LLC.
- Flowerwood, LLC embarked on a 40B application in 2019 but did not reach fulfillment.
- In 2019, then select board chair Brian Packish, in a letter to MassHousing, described the 40B application as “grossly incomplete” and also wrote that the select board “does not find this is a suitable site for the development as proposed.”
- In August of 2023 the 40B application was resuscitated and subsequently the Oak Bluffs Zoning Board of Appeals referred the project to the Commission.

**1.12 Litigation:** In the Autumn of 2022 the Applicant sued the Town of Oak Bluffs (Copeland specifically) in Land Court. The case was transferred to the Dukes County Superior Court in March of 2023. The case was dismissed on August 17, 2023 with one of the surviving counts dismissed with prejudice, one without prejudice, and both parties foregoing appeal.

**1.13 Project Summary:** To demolish a MACRIS-listed 19<sup>th</sup> Century, Campground style dwelling (the Stephen Flanders House), and accompanying 20<sup>th</sup> Century cottage and to erect an eight-unit, nine-parking-space apartment building with a drive through ATM and rental storage incorporated into the structure.

## 2. ADMINISTRATIVE SUMMARY

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**2.1 DRI Referral:** Oak Bluffs Zoning Board of Appeals

**2.2 DRI Trigger:** 4.1 Multiple Residential Units: Any Development, including an expansion or Change of Use of an existing Development, which proposes to create or allow or make available: a. 5 or more dwelling units including guest houses — **Mandatory Referral Requiring Commission Concurrence**

**2.3 DRI Trigger:** 8.1-A Demolition or Relocation of Historic Structures Any Demolition or relocation of a structure that either: *a. has been identified as having historic significance by a local historic commission or architectural commission, by a general plan of the Town, by the Massachusetts Historical Commission, or is listed with the National or Massachusetts Registers of Historic Places* — **Mandatory Referral and Commission Review**

**2.4 Additional Possible Triggers:** 3.1 Commercial, Storage, Office, Industrial and/or Mixed-Use Development : Any Development of a commercial, storage, industrial, and/or office use, including any use of any of the foregoing mixed with a residential use, provided that one or more of the following thresholds are met: *f. a Change of Use (either partial or complete), or any Change in Intensity of Use, such that the new use on its own would trigger any threshold in this DRI Checklist* –

**Mandatory Referral Requiring Commission Concurrence** j. high traffic-generating business, such as a drive-in bank, convenience market, fast food or take-out restaurant, coffee or donut shop, or service station. –**Mandatory Referral Requiring Commission Concurrence**

**2.5 State of MassHousing Application:**

- Staff still assessing.

**2.6 State of Commission Application:**

- To date the application is incomplete.
- The Applicant was notified of the incompleteness of the application through an October 31, 2023 formal letter from the DRI Coordinator and another formal letter from the Executive Director, dated November 9, 2023. The letters were issued after months of email exchanges that didn't result in a complete application.
- Among the missing elements of the application are a proper site plan bearing a stamp, a compass arrow, and linear dimensions—the latter being important for various assessments of the project, a wastewater plan and/or a letter that spells out a specific sewer flow allotment, a letter from the fire department that offers an opinion on the need or lack of need for a sprinkler system, and nitrogen calculations.
- The Applicant's Agent has expressed, in writing, an unwillingness to expend any more money on the project unless the demolition is assured.

**2.7 LUPC:** Held August 21, 2023

**2.8 Full Commission:** Slated for April 4, 2024

**3. PLANNING CONCERNS**

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**3.1 Wastewater:**

- The Stephen Flanders House and its studio have a total of five bedrooms, according to the Town's property card.
- The Applicant's project calls for eight studio units.
- The Project Site is at present serviced by a cesspool, according to the Applicant's Agent and Board of Health Records.
- The Applicant's Agent provided a screenshot of an email from the Oak Bluffs Wastewater Department that outlined, in general terms, upgrades anticipated for the Town's wastewater system. The email does not speak to the Applicant's project.
- It's unclear if the project can be and will be allotted sewer flow by the Town.
- When asked for evidence of flow allotted to the project, the Applicant's Agent cited the email screenshot and asserted flow would be available.
- The Applicant's Agent also asserted the Oak Bluffs Wastewater Department does not have flow allotment power under 40B—that it is the purview of the ZBA, a body that will be "virtually compelled to grant a connection."

**3.2 Groundwater:**

- The Project Site is in the Oak Bluffs Harbor watershed and on the periphery of the Farm Pond Watershed.
- In response to a letter from the Executive Director sent in November (in which, among other things, missing elements of the application were outlined) the Applicant's Agent questioned the necessity of providing nitrogen calculations and asserted no further "unnecessary" expenditures would be made "until we are assured of demolition."

- The adjacent bowling alley, a business and property in Sawyer Family contiguous ownership, albeit under a different holding company, was the site an environmental cleanup.
- Prior to the creation of the bowling alley, several commercial/industrial structures on several lots occupied that area. Among the businesses on those lots were Graves Texaco and Graves Machine & Tool Co.
- The Graves Machine and Tool Co., according to its MACRIS listing, made machine replacement parts for Duracell Battery, Polaroid, General Electric, Raytheon, Gillette Co, and the MBTA.
- Petroleum contamination was discovered in and around Graves Texaco in the early 2000s.
- A clean up was undertaken and litigation ensued (Graves versus RM Packer Co., Graves prevailed).
- Nickel Penetrate was also discovered in the ground—ostensibly from a bluing tank used for metal finishes.
- Documentation regarding the petroleum cleanup can be found both on the MassDEP website and in the files of the Oak Bluffs Board of Health.
- MassDEP expressed no concerns during an informal conversation with staff about the past petroleum contamination—noting the prior cleanup work was executed through the practices and under the standards of the time.
- The Nickel Penetrate findings were considered below the threshold for concern. Nickel Penetrate did not appear to be part of the cleanup.
- Some documentation also mentions chlorinated solvents but it's unclear if that type of substance was ever at problematic levels.
- The contamination and cleanup were noted in the DRI 645 staff notes and reaction to it is found in the DRI 645 decision wherein an offer conditions any lending on the MV Bowl property on a clean environmental report that must be provided to both any given lender and to the Commission.
- The contamination and cleanup are only relative to 3 Uncas Avenue under the possibility contamination extended onto that property, which is abutting. The only available evidence that might shed light on such a possibility is 2007 letter to a real estate agent from Engineer Denis D'Amore, who oversaw the cleanup.
- D'Amore wrote in part, "There was no evaluation of environmental conditions on abutting properties that might have an impact on the subject site nor has there been an evaluation of site conditions since November 2003.
- Both records and information relayed in informal conversation with MassDEP indicate off-site contamination, such that it was, flowed more or less Eastward, as evidenced by the choice to dig test holes in or near Bradley Avenue. 3 Uncas Avenue lies to the North. Oak Bluffs Harbor lies more or less Northeast.
- When asked if a 21E assessment has been done at 3 Uncas Avenue or it one was planned, the Applicant's Agent wrote: "This has been a single family house for 120 years. No need for 21E review."

### **3.3 Stormwater:**

- The Lolley Report cites "Evidence of storm water intrusion in the basement"
- Pipe leakage also occurred in the cellar, municipal documents show.

- It's unclear if that leakage was mistaken for stormwater intrusion.
- Two nearly parallel municipal storm drains are nearby to the Project Site on Uncas Avenue.

### 3.4 **Traffic and Transportation:**

- The project includes a drive through ATM, a potential high traffic generator that is specifically cited in the DRI checklist under 2.4 j.
- On August 21, 2023 the LUPC voted that an outside traffic study was not required and that staff could execute a traffic study.
- Information provided to staff to date is insufficient to execute a staff traffic study.
- A proper site plan has not yet been provided. The drawings that have been provided show a drive through ATM.
- The drawings do not show dimensions (see application status).
- The drawings indicate vehicular circulation to the ATM would be from Circuit Avenue onto Uncas Avenue.
- The drawings also indicate access to the project's parking lot would be off Hiawatha Avenue.
- The Applicant's Agent has been unable to provide figures for how many vehicles were expected to use the ATM per day in season and off season.
- The Applicant's Agent was unsure if the ATM would have a canopy but was open to the idea.
- The Applicant's Agent pointed to tenants' lease agreements for proposed apartments as adequate hedges against overflow parking in the adjacent bowling alley or bank parking lots.
- Neighbors, both residential and commercial, expressed concern about parking and traffic when the project was initially pitched to the Town of Oak Bluffs and MassHousing in 2019. Their concerns were attached to a letter the Oak Bluffs Planning board sent MassHousing at the time.

### 3.5 **Character and Identity + Cultural Resources:**

#### Stephen Flanders:

- Stephen Flanders was a whaling captain who later became a state legislator and was a key player of the Commonwealth's authorization of Cottage City separating from Edgartown to form a new municipality in the 19<sup>th</sup> Century.
- The 19<sup>th</sup> Century newspaper the Cottage City Star described Capt. Flanders as a "careful discreet man of intelligence, anxious to do his whole duty, faithful to his announced principles and his friends. No one will wheedle or cajole him into a departure from the position he has taken."
- In 1879 the population of a section of Edgartown clamored to breakaway and form a separate town. That section of Edgartown comprised what is known as Oak Bluffs today. The rest of Edgartown, led by whaling fleet owner Samuel Osborn, Jr. was not supportive of the idea.
- As Dr. Charles Edward Banks put it in *The History of Martha's Vineyard, Dukes County, Massachusetts*, "the struggle developed exceedingly bitter feelings between the people of the two sections, and before its close the petitioners had practically abandoned attendance at town meetings because of the personal ill-treatment with which they claim to have received at the hands of their opponents."

- Vineyard representatives to the General Court at the time were selected by the Island's towns in a rotational manner. It was Chilmark's turn in the rotation in 1879.
- In 1879 the Cottage City Star, a pro-secession newspaper, endorsed Capt. Flanders as candidate for the Vineyard's state representative. The Cottage City Star described Capt. Flanders as the "People's candidate".
- Capt. Flanders' opponent was another Chilmark resident, Beriah T. Hillman, who was described as the "machine" candidate in Arthur R. Railton's *The History of Martha's Vineyard, How We Got to Where We Are*.
- Capt. Flanders won the seat.
- Railton notes the election of 1879 was first time Native Americans from Gay Head were allowed to vote: "All but one of their 24 votes went to Stephen Flanders..." Railton further noted this amounted to more than half of the 40 votes he won by.
- Capt. Flanders' victory was contested due to allegations of irregularities made by Edgartown residents who were deeply against secession. However, the Commonwealth upheld Capt. Flanders' victory.
- With a history of three unsuccessful petitions, the secessionists submitted a fourth petition to secede from Edgartown. "With the active support of Representative Flanders," Railton writes, "it passed both houses quickly. At 4.00 P.M. on February 17, 1880, the governor signed it. Cottage City was no longer merely a hopeful name on a newspaper masthead; it was now the official name of a town."
- Following the approval of the separation, the Cottage City Star—which had previously likened the quest to leave control of Edgartown to the struggle of American colonists seeking independence from Great Britain—exclaimed, "We have met the enemy and they are ours!"
- With the creation of Cottage City as a separately incorporated municipality, Edgartown lost sizable territory and tax revenue.

#### Ambler Wormley:

- Ambler Wormley was a Black real estate investor and gas station entrepreneur who owned the Stephen Flanders House and lived there.
- "Born in 1892 he moved to the Vineyard at the age of 10," Elaine Cawley Weintraub emailed. "He enlisted for military service in WW1 in the town of Oak Bluffs. In 1919 he purchased the property at 3 Uncas Avenue with his mother Sarah Wormley. In 1944 following the death of Sarah Wormley her daughter Ella Page petitioned the probate court as a heir to the property at 3 Uncas Avenue. The property to be held in severally. This property remained in the Wormley family until 1963 as the property of Ella Page, Ambler's sister. In 1926 Ambler Wormley purchased property at the present site of the Barn Bowl and Bistro where he opened a garage later occupied by the Graves Tool company (another Black owned business and now a site on AAHTMV)."
- Wormley's gas station on Uncas Avenue was known as the Ambler B. Wormley Texaco Gas Station.
- A MACRIS listing for another of Wormley's gas stations stated in part, "During a period when the place of African Americans on Martha's Vineyard was restricted because of race, Ambler Wormley was a business owner and contributor to the civic life of Oak Bluffs."
- "At a time in our history when opportunity for African Americans was so limited and every road ahead was restricted because of race," Weintraub wrote in the Martha's Vineyard Times article

*Embracing the American dream*, “Ambler Wormley refused to accept those limitations. He embraced the American dream. He was a military veteran who had served his country, and was a member and onetime commander of the Gov. Thomas Mayhew Post of the American Legion. He served for several years on the finance committee for the town of Oak Bluffs.”

Stephen Flanders House MACRIS Listing:

- Called the Stephen Flanders House in the Massachusetts Cultural Resource Information System (MACRIS), the 1874 dwelling is described as Victorian Eclectic.
- The MACRIS listing points to a “covered balcony with decorative posts and brackets,” a “covered porch” with “decorative posts and brackets,” “dormers,” and “decorative vergeboards with pendant,” as among the architectural features of the dwelling.
- The dwelling was relocated from 152 Circuit Avenue in 1889, according to the MACRIS listing.
- “This house is of the expansive Campground cottage construction,” the MACRIS listing states. “It is significant as a part of the Oak Bluffs Land and Wharf Company development which began soon after the growth and popularity of the Wesleyan Grove Campground. The development became a secular alternative to the Campground and flourished as one of the most popular and well known East Coast summer resorts.”

Dray Memorandum:

- Architect Eric Dray, in his October 12, 2023 Memorandum on the Stephen Flanders House, refers to a Martha’s Vineyard Museum Quarterly article by Skip Finley called “Captains of Cottage City: The Men Behind the Boom of the Bluffs.” Drawing from the article, Dray points out that the Oak Bluffs Land and Wharf Company appears to chronologically earlier than what has been thought of as America’s first planned community. “[A]lthough the village of Riverside, Illinois, designed in 1869 by Calvert Vaux and Frederick Law Olmsted, is often claimed to be the first planned community in America,” Dray wrote, “the Oak Bluffs Land and Wharf Company development actually preceded it by 2-3 years, and may hold that honor. As built out, the Oak Bluffs Land and Wharf Company development is a unique district of curvilinear streets, numerous parks, and an outstanding collection of Campground-style cottages.”
- Of the style of the Stephen Flanders House, Dray described it as a “good example of Campground style.”
- Dray further writes that the Commonwealth opts for Victorian Eclectic as the stylistic classification of the Stephen Flanders House specifically, and for similar houses generally, as opposed to classifying them as Campground style. “This is a style classification that is unique to Martha’s Vineyard,” Dray writes. “Massachusetts Historical Commission (MHC) documentation classifies the cottage as Victorian Eclectic in style. This is a catch-all category that MHC uses for houses that do not reflect characteristics of styles that they recognize state-wide. As a local style, the MHC does not include Campground in their list of styles and, as a result, cottages like 3 Uncas Avenue are classified as Victorian Eclectic.”
- Dray points out that many of the exterior period ornamental details of the Stephen Flanders House are still part of the dwelling. “The front porch retains its ornamental details, including the turned posts that rest on chamfered posts, and jigsaw cut scroll brackets,” Dray writes. “Also still extant are the unusual triangular cut exposed rafter tails of the porch roof. It is possible that the original posts and trim may also be extant within

the enclosed portion of the porch. The second-story centered balcony and gable peak also retain their decorative embellishments.”

Cottage City Historic District Commission Email:

- In a September 8, 2023 email to the Commission signed by Vice Chair Phil Regan, the Cottage City Historic District Commission (CCHDC) relayed that Robert Sawyer (representing Flowerwood, LLC) came before CCHDC three times between 2019 and 2021 to propose the demolition of the Stephen Flanders House and the erection of a replacement apartment building.
- The letter indicates Robert Sawyer withdrew the proposal in 2022.
- “The CCHDC, during all proceedings devoted to 3 Uncas Avenue”, the letter states, “has consistently and unanimously stated their concerns over the potential demolition of the [Stephen] Flander’s house based on its Massachusetts Cultural Resource Information System listing, it is a very visible location on the corner of Circuit Avenue and Uncas Avenue (Circuit Avenue acting as the defining line between the Cottage City Historic District and the Camp Meeting Grounds) and its exemplar architectural style (Victorian Eclectic, or more locally known as ‘Campground Cottage’). The house, even its current state, offers significant architectural detail representative of a residential past found throughout Oak Bluffs.”
- CCHDC, which shares jurisdiction over the Stephen Flanders House with Copeland, sent its September 8, 2023 email following a request for opinion by the LUPC.

Copeland Plan District Review Board Letter:

- In a September 1, 2023 letter to the Commission signed by Copeland Plan District Review (Copeland) Board Chair Gail Barmakian, noted there were two unanimous denials of the Flowerwood, LLC proposal to demolish the Stephen Flanders House.
- Copeland denied the demolition proposal in 2019 and 2022.
- In the letter, Copeland asked the Commission to “honor” the denials.
- Additionally, Copeland states, “The Board feels strongly about preserving the integrity and character of properties and viewsapes located in the Copeland District as it is not only a District of Critical Planning Concern and protected under the powers of the Martha’s Vineyard Commission, but also is significant in defining the character and history of the Town of Oak Bluffs as well as being one of the first planned residential communities in the United States and designed by Morris Copeland.”
- Copeland’s jurisdiction over the Stephen Flanders House overlaps with CCHDC. Copeland sent its September 1, 2023 letter following a request for opinion by the LUPC.

Oak Bluffs Historical Commission:

- Minutes of the Oak Bluffs Historical Commission (OBHC) for a meeting January 15, 2019 meeting show, based on its reading of the MACRIS listing, that OBHC agreed the Stephen Flanders House was “significant”.
- OBHC went on to vote unanimously that the Stephen Flanders House was “significant in terms of architectural and social history of the town.”
- OBHC does not appear to have jurisdiction over the dwelling. Nonetheless, LUPC wanted the opinion of OBHC for the record.
- OBHC sent minutes to the Commission as its response to a request for opinion.

Asbestos Removal:



- Between when a quitclaim deed for 3 Uncas Avenue was signed over by Larkin and Grace Reeves, as trustees of the Larkin B. Reeves Family Trust, to Flowerwood, LLC, on November 19, 2018, and when the deed was recorded in the Dukes County Registry of Deeds on December 27, 2018, asbestos removal work was undertaken inside and outside of the Stephen Flanders House.
- The inside work consisted of flooring removal. The outside work consisted of siding removal.
- The Applicant's Agent, in response to staff questions, wrote that the town advised an asbestos inspection was in order ahead of a possible demolition. The Applicant's Agent did not say the town advised that identified asbestos be removed and no documentation has been presented that shows any communication from the town regarding asbestos.
- The asbestos siding that once clad the Stephen Flanders House was, according to documentation provided by the Applicant's Agent, cementitious.
- Asbestos shingles and siding of this type were machine produced in America starting in the early 20<sup>th</sup> Century, according to a National Park Service webpage. "Both asbestos-cement shingles--and siding--were produced into the 1980s, testimony to their popularity and affordability," the page states.
- According to a MassDEP Asbestos Information and Resource Guide, asbestos siding doesn't necessarily need to be removed if it's in good order. However, if a building is to be demolished, then removal is in order.
- "If asbestos is in good condition and it does not pose a health hazard," the relevant passage states, "no laws or regulations require that it be removed. However, building owners are required to keep asbestos in good repair to prevent releases of visible or particulate asbestos emissions under state and federal regulations. If a demolition/renovation or repair activity could disturb any amount of asbestos containing material, then it is required that the asbestos be removed prior to the activity. Demolition of a building requires that all asbestos be removed prior to demolition."
- The asbestos removal work at the Stephen Flanders House was complete as of December 14, 2018 per a letter from C Asbestos of Medford, MA.
- A demolition permit application was received by the Oak Bluffs Building Department four days later on December 18, 2018. It never reached fruition as Copeland later twice denied the demolition application.
- The removal of the asbestos siding, which was a light bluish color based on assessor card photos, degraded the appearance of the Stephen Flanders House by leaving behind bare patches of sheathing in some places and patches of tarpaper in others.
- In his memorandum, Architect Dray correctly notes that in many places the original siding (over which the asbestos siding had been placed) was revealed following the removal work. In some places painted clapboards have been revealed, in others cedar shakes. In many places this previous, and perhaps original siding is covered with tarpaper and protruding nails.
- The asbestos removal cost approximately \$24,000 based on check images provided by the Applicant's Agent.
- On February 1, 2024, MassDEP Southeastern Regional Office informed the Commission it had no records regarding an asbestos removal at 3 Uncas Avenue.

### Lolley Report:

- A July 11, 2022 report by Engineer John Lolley states that Lolley inspected the Stephen Flanders House and the detached studio on the property on July 9, 2022 to assess their conditions.
- The report is short, two pages comprised of approximately 125 words and six photographs, letterhead, addressee, footer, date etc.
- Regarding the attic, the report notes “obvious water damage and leaking occurring”.
- Concerning the interior, the report notes “Uneven, settled, and unstable floors” and “Mold throughout interior walls/ceilings” and “Water damaged ceilings”.
- Concerning the cellar, the report notes “Deteriorated mortar” and “Rotting/deteriorated sills” and “Deteriorated brick/stone foundation walls with large cracks” and “Evidence of storm water intrusion in the basement”.
- The report concludes that the “structure,” which seems to refer to the Stephen Flanders House as opposed to the detached studio/cottage, “is not suitable for human habitation and should be demolished.”
- The report does not explore alternatives to demolition, such as repairs, nor does it provide descriptions or dimensions for the types of structural members the dwelling is built with.
- The engineer’s stamp on the report is signed by Lolley and hand dated June 6, 2020.
- In early January, 2024, Lolley told staff via telephone the date was likely a clerical error. During the same call, Lolley offered to come to the Stone Building to discuss the report with staff. This has not yet occurred.
- A family member subsequently told staff Lolley had retired and would not be providing comment on his report.
- The Commission has not yet had an independent engineer review the Lolley Report, evaluate the Stephen Flanders House, and generate a report.

### Town Finding & Order to Secure:

- On August 2, 2022 the Oak Bluffs Building Department issued a letter ordering “all openings” to be “boarded up to prevent individuals from unwanted entry.”
- The letter also declared, based on the opinion of the building official, that the Stephen Flanders House was not “in danger of imminent failure or collapse”.
- Architect Dray’s memorandum speaks positively about the boarded-up windows. “In terms of the plywood covering of window and door openings on the first story, it is likely that some of the original or early wood windows and doors lie behind the plywood coverings. These plywood coverings should be seen as a protective measure, not evidence of the building’s dereliction.” (see Social Development for more on the order to secure).
- Not all openings were covered over when staff began to review the referral in August. Also, one window and one door, both on the second floor, were open.
- After this was pointed out in a letter to the Applicant’s Agent on November 9, 2023, the door and window were closed. The door and several windows were boarded up.
- However, some windows on the Southwestern side of the Stephen Flanders House remain uncovered as of January 13, 2023, including the window that had been open.

### Staff Assessment:

- Age (1), based on policy criteria.

- History/Cultural (3), with the understanding that Stephen Flanders, who features in “Captains of Cottage City: The Men Behind the Boom of the Bluffs,” which is cited for other reasons in Architect Dray’s memorandum, was a pivotal figure in the establishment of the Town of Oak Bluffs and because it is representative of architecture in what the aforementioned article argues may be America’s first planned community.
- Design/Construction (3), based on being a representation of the unique Campground style and because of the ornamental features still on the dwelling as noted by Architect Dray.
- Historic Portion of Previous Alterations (4), because even though the building was relocated and the porch diminished, the historic features of the dwelling are clearly observed.
- Contribution to Streetscape/Community (3), based on prominent siting, Cottage City’s written description of the dwelling as the defining line between Cottage City Historic District and the Camp Meeting Grounds, and Architect Dray’s description: “This cottage, and the ca. 1900 cottage across the street, 105 Circuit Avenue, serve as the last residential buildings heading north before turning the bend and entering the more commercial portion of Circuit Avenue. Conversely, heading south, these two cottages mark the beginning of the residential portion of Circuit Avenue.”
- Historic Designation (2), based on MACRIS listing.
- Visibility to the Public (3), highly visible from a major thoroughfare and will likely be seen by everyone who utilizes a planned town parking lot at O Uncas Avenue.
- Condition (1), based on appearance and available documentation.
- Total staff score: 20.

Demolition By Neglect:

- “Demolition by neglect,” as described in the Massachusetts Historic Commission’s *Preservation Through Bylaws and Ordinances*, “is the gradual deterioration of a building from a lack of routine or major maintenance until eventually the building poses safety concerns or repair is infeasible. It may result from abandonment or neglect but it can also occur through deliberate efforts on the part of an owner to remove a building.”
- The Commission may want to consider if, to some degree, Demolition by Neglect has occurred.
- Both CCHDC and Copeland allege that the Stephen Flanders House has suffered from demolition by neglect.
- In its letter, CCHDC states, “The CCHDC’s position has been, the house was occupied prior to Mr. Sawyer’s purchase of the property, and it has been intentionally allowed to fall into disrepair under his ownership, including the removal of the exterior siding, the opening of doors and windows and the allowance of a SWAT tactical operation on the premises in September 2019...”
- In its letter, Copeland states, “the Board determined, among other things, that the deterioration of the structure was voluntary and intentional...”
- Some police reports provide a window into the condition of the building at certain points over roughly the seven years.
- Oak Bluffs Police Report 2019000516-1, for example, indicates that February 15, 2019 an unnamed person notified police water was leaking in the cellar of the Stephen Flanders

House. An officer responded, verified the leak, and mustered Michael Sawyer and from the adjacent bowling alley as well as the Oak Bluffs Water Department.

- An invoice from the water department dated February 14, 2019 indicates the water meter was frozen and broken and the water was shut off. It's unclear if this denotes two events over two days in the cellar or if one of the dates is off by a day.
- It's conceivable the cellar stormwater intrusion cited in the Lolley Report was caused by the leaking pipework.
- Several Oak Bluffs Police reports cite squatters or trespassers at the Project Site.
- Oak Bluffs Police report 2020003922-1 indicates that somebody reported open windows and heard voices at the Stephen Flanders House on September 13, 2020. Police arrived the same day and didn't find intruders but did find "obvious signs of people squatting at the house and a large amount of vandalism, spray painted walls, and broken windows..."
- As noted in Town's August 2, 2022 finding and order to secure, the building department did not deem the Stephen Flanders House a collapse or failure risk and ordered openings secured.
- Staff photography shows a sash window and the door leading to a second floor balcony were open from July 2023 to November 2023.
- When the window and door were cited in a November 9, 2023 formal letter to the Applicant's Agent, the Applicant's Agent responded by email as follows: "Your letter is the very first notice we have ever received from anyone that windows are open. We will address that. We suspect someone wa[s] able to gain access for sleeping. Perhaps you have heard we have a housing crisis on MV. Other than your identifying two open windows we have no knowledge of any water intrusion".
- Former Commissioner Richard Toole told the LUPC on August 21, 2023 that he was the caretaker of 3 Uncas Avenue before the Stuart Family sold it. He said that back then it wasn't in the declined state it is in now and that he planned to testify at the DRI hearing.

Various Applicant's Agent's Written Responses to Questions Relative to Character & Identity:

- Response to a request for a *[n]arrative statement explaining why demolition is necessary, including a description of any alternatives that were pursued, with accompanying documentation.* "The subject build[ing] is decrepit by any criteria or by any expert viewing. It was built in 1900 with inexpensive construction as a summer house and never had normal insulation or heating facility. To the best of our knowledge it has never been occupied year-round. This building has had no upgrades or improvements in a very long time. Rehabilitation is beyond cost prohibitive. When Building Inspector viewed property, they ordered us to immediately Board-Up the property as not safe."
- *If the house is vacant, documentation as to efforts taken by the current owner to secure the house from deterioration.* ["W]e have made no improvements as we naively believed that the community would readily [support] the demolition of this dilapidated building and our plan to provide eight new workforce housing units."
- *Was any of the cementitious siding on the dwelling in a damaged state prior to the commencement of work by a licensed asbestos contractor?* "Do not know and do not know who to seek for this information."
- *Do you have a caretaker for the property? If so, what are their duties?* "We own and manage many properties."

- *How often is the lawn mowed and how often are the shrubs cut back/trimmed?* “Not applicable.”
- *Have you ever sought bids for the restoration of the structure?* “No but all educated estimates are prohibitive.”
- *What efforts have you taken to stop water intrusion?* “Water has been turned off since we acquired the [property].”
- *To clarify a question posed before, what efforts have you taken to prevent rainwater intrusion into the existing building?* “Not yet planned”
- *Since your receipt of the two-page report from John Lolley, PE in which water damage is noted, could you please state clearly and comprehensively what efforts you have taken to limit water intrusion into the building (rain/snow/ice)?* “We have no evidence of present water intrusion into the building. If you have contrary information, please provide us to it. Of course, if the Property remains undeveloped, it is possible that it may become vulnerable to the elements”.
- *Has anybody lived in the house since you’ve owned it?* “No”.
- *Have you reconsidered some sort of Plan B for what you would do with the Stephen Flanders House should you be unable to fulfill your intent to demolish it?* “We have no Plan B for the subject property. Its highest and best use is as a site of much needed affordable housing. If we do not receive approvals in due course, as prescribed under the Commonwealth’s affordable housing statute, the building will simply remain boarded up. It would have been preposterous to us five years ago when we acquired this dilapidated building that we would have so much difficulty to demolish and build affordable housing that this community desperately requires.”
- *Will the proposed replacement residences have architectural features reflective of the original house and the surrounding neighborhood?* “No, the architectural features will be totally consistent with all the surrounding properties which are all commercial.”
- *Current floorplans and elevations delineating the original portion of the structure.* “They do not exist.”
- *Description of any historically significant events or people associated with the building, with any supporting documentation.* “To the best of our knowledge there are none.”

### **3.6 Social Development:**

- Since its acquisition by Flowerwood, LLC, Oak Bluffs Police have made at least five calls to 3 Uncas Avenue despite the Stephen Flanders House and its studio being ostensibly vacant. Vandalism, squatting, and trespassing, were among the issues police dealt with.
- When staff first photographed the property in August, shrubbery was wildly overgrown, the lawn weedy and unmowed, trash and debris was in the yard and on the porch, including a mattress beside the studio and bags of rubbish by the fence that divides the bowling alley from the Project Site. Roughly two months after the referral, and following a staff/Applicant meeting, the lawn was mowed and a bit of shrubbery was tamed. Sometime in October, all shrubbery facing Uncas Avenue and Circuit Avenue was cut to the ground as opposed to trimmed (hydrangeas, rhododendron, yews).
- Exterior trash and debris remain evident, including, as of April, 2024, the same bags of rubbish prominently situated against a fence as they had been since August, 2023.
- Most but not all the windows of the Stephen Flanders House are boarded up.

- No lights are evident inside or outside the building at night.
- The property is not fenced.
- In the summer of 2022, the Oak Bluffs Police Chief, according to a report, deployed an officer to the property to affix a no trespassing sign on a door of the Stephen Flanders House and on the door of the studio to thwart squatters. This was done with the permission of Michael Sawyer, according to a report.

Broken Windows Theory:

- The Commission may wish to consider whether Broken Windows Theory is at play.
- In 2009, the Massachusetts Municipal Association posted about Broken Windows Theory on its website following a study conducted by Suffolk University that was covered by the Boston Globe.
- “A study conducted in Lowell provides new support for the ‘broken windows’ theory,” the post states, “which holds that keeping neighborhoods clean, orderly and well-maintained is an important tool in preventing crime. In 2005, researchers identified 34 crime hot spots in Lowell and divided them into two groups. Half received problem-oriented help such as fixing streetlights and clearing away litter, while the other half received no additional assistance. Results published in the August issue of the journal Criminology show a 20 percent decrease in calls to police from the areas that received special attention.”

**3.7 Impact on Abutters:**

- Per meeting minutes, and 2019 letters to the Oak Bluffs Planning Board some neighbors previously expressed objections to the 40B development.
- Abutter Amy Billings expressed concerns about the project in a January, 2023 email.

**3.8 Landscape and Lighting:** See Social Development.

**3.9 Health and Safety:**

- The project appears to require a sprinkler system however the Applicant’s Agent disagrees.
- The Applicant has been requested to seek a written opinion from the Oak Bluffs Fire Department.
- The reasoning of the Applicant’s Agent on why the project doesn’t need a sprinkler system is as follows: “This is absurd. We have previously advised the MVC that M.G.L, c 148 § 26G provides that sprinklers are not required for a project of this size under Massachusetts law. If Oak Bluffs has some code that is more restrictive than state law we will abide by all codes and laws. As is well known, we own very many properties on MV and our reputation for compliance with all codes and laws is spotless. Why do you require us to go to the Fire [Department] about a project that will never occur [if] demolition is not approved. Why just sprinklers what about [plumbing], and electrical?”

**3.10 Island Housing Needs:**

- The dwelling and studio at 3 Uncas Avenue have five bedrooms spread between them.
- The project calls for eight workforce rental studios.
- The intervals the studios would be rented is unclear as are the restrictions that would be imposed.
- The Applicant’s Agent has stated that the Applicant wishes to reserve the right to sell the studios as condominiums in the future.
- The Applicant has presented no condominium paperwork (proposed master deed, proposed declaration of trust, etc.)

- The Applicant's Agent has stated his family company would manage the studios and the rest of the proposed building.
- More information is required for staff to conduct a thorough assessment of the housing proposal.

**3.11 Municipal Services and Taxpayers:** See Social Development