

**DRI 612 –Bradley Square Zoning Issues**  
**(MVC Question, Applicant Answer, OB Zoning Administrator Response, MVC Staff Review)**

MVC Question regarding zoning - Clarify what could be built under existing zoning, either as of right or with special permits with regards to uses, building size and setbacks, tree cutting, paved area, and parking.

**Applicant Response** - The 18,705 sq. ft. property consists of six legal lots, three lots located in 12,615 sq. ft. of the residential district and three lots located in 6,090 sq. ft. of the business district. Under the draft proposed changes to the DRI application, the square footage for all three buildings will total 13,741. For reference purpose only, under the Town of Oak Bluffs existing zoning this property could have been purchased and as many as four to five buildings total 28,000 sq. ft., 35 feet in height in the business district and 32 feet in height in the residential district, could have been built under the town's zoning by-law. See description below: Dukes County Avenue Business District Lots (6,090 sq. ft.): Both of the alternatives below could have resulted in the removal of the 15 existing trees in poor to good condition, other than three street trees along Duke County Avenue in fair condition that the Town could have required to be retained. Whatever portion of the property not built upon could have been paved over for parking or for a drive-way/ drive-through.

Residential Alternative – As many as three 35 foot high three-story 6,000 sq. ft. single or multi family-houses (within three 2,000 sq. ft. building envelopes) set five feet from the street, with off-street parking provided in ground floor garages, could have been constructed on each of the three lots located in the B-1 District.

Commercial Alternative – as many as three 35 foot high three story 1,999 sq. ft. commercial buildings set five feet from the street, with off-street parking provided in ground floor garages, could have been constructed on each of the three lots located in the B-1 District. The third lot that is half in the Business District would need approval from the ZBA to extend the Business District regulations (who has historically approved all B-1 extensions). Businesses could have consisted of anything from more art gallery spaces to a take-out or drive-through fast food businesses.

Masonic Avenue Residential District Lots (12,615 sq. ft.): This alternative could have result in the demolition of the Denniston building and the removal of the 10 existing trees in poor to good condition, other than one street tree along Duke County Avenue in fair condition that the Town could have required to be retained. Whatever portion of the property not built upon could be paved over for parking or a driveway.

Residential Alternative – One large 32 foot high two and a half-story 10,000 sq. ft. single-family house (within 4,615 sq. ft. building envelope) with 20-foot setbacks from the lot lines and off-street parking provided in ground floor garages could have been constructed. Alternatively, two buildings could have been constructed within the 4,615 sq. ft. building envelope, including a single-family house and guesthouse (that could be built with a waiver or within 5-years).

**Oak Bluffs Zoning Board of Appeals Administrator Response –**

The 1<sup>st</sup> part of the response to question 3 in **Zoning** is not accurate because the property was conveyed to the Island Affordable Housing Fund under one name. The doctrine of merger applies in that the owner has one lot with a structure on it. The lot itself lies within two zoning districts – R1 & B1.

When asked by Staff if the O.B. Zoning Administrator had any comments as to whether the Applicant statements accurately reflect what could be done under zoning if the lots were separately owned he said:

They somewhat reflect current zoning. If you had 5 -6 lots held in separate ownership, each of which having at least 5,000 square feet of space, access to town water and an approved sanitary disposal system, they could build separate 2 story or 3 story SFD's (single family dwellings). Yes the remaining portion of the lot(s) could be paved over for parking and; The third statement is accurate in that on a conforming lot (10K+ sq. feet) 1/3<sup>rd</sup> of the lot can be used for the building's footprint and volume can go as high as 10K if the structure were to have three floors up to 32 feet in height. Basement garages are not considered part of the living square footage calculation.

## **DRI 612 –Bradley Square Zoning Issues**

### **MVC Staff Review:**

1. There are a number of inaccurate assertions in the Applicant's response regarding zoning.
2. Four to five buildings with 28,000 sf of space may not be built on these properties.
3. The entire property is 18,730 square feet therefore 5-6 lots held in separate ownership with 5,000 sf each is not possible (see Zoning Administrators response).
4. The Applicant purchased two parcels/lots within which are six obsolete lots (4 in lot 195 and 2 in Lot 193). Oak Bluffs Zoning Section 4.0 allows one structure per lot. Therefore they could have two principal buildings on the entire property.\*
5. If a private person were to purchase the property that IAHF has bought they would have purchased one 12,632 sf residential lot (Map 11 Lot 195) and one 6,098 sf commercial lot (Map 11 Lot 193).
6. If a private person bought the 12,632 sf residential lot separately they would either have to move into the Denniston house or renovate it. If they wanted to demolish it the Oak Bluffs Historical Commission would put a six-month demolition delay on it (Because it is over 100 years old) and promptly send it to the MVC as a DRI. If the MVC allowed them to demolish the Denniston building they would be able to build one single family house. If they lived (owner-occupied) in the house for five years they could apply for a Special Permit to build a guest house (750 sf). Oak Bluffs Zoning Section 4.2.5 says that no permit shall be granted for the construction of a new dwelling that will occupy more than one-third of the lot area. Therefore they could technically build a single family house with a maximum footprint of 4,210 sf and several floors but it would be unlikely that this would be approved (wastewater, parking, character, etc...). They could build a detached garage under 500 sf and a shed under 100 sf.
7. The applicant does not have three lots wholly located in the business district and therefore could not do what they say they could. They have one 6,098 sf parcel wholly in the business zone that could have one building on it.\* Approximately 1,600 sf of the 12,632 sf residential lot is in the business district. The Applicant is seeking to expand the business district by up to 30 feet. However, the intent of the by-law allowing extension is for commercial use.
8. The B-1 lot has parking requirements that would further limit the amount of development on this parcel. Commercial uses require 5 parking spots for the first 500 sf and 1 spot for every 200 sf thereafter. In other words a 2,000 sf commercial bldg would require 12 parking spots. Residential units in the commercial district have historically been required to have 1 spot per unit.
9. The intent of the B-1 commercial district is for business. If you want to build a single-family home in the business district it may have to comply with residential zoning (i.e. 10,000 sf).
10. Currently the Oak Bluffs Assessor has Map 11 Lot 193 listed as unbuildable and assessed at \$24,500.
11. Since a residential lot requires 10,000 sf and only allows one principal structure they could have one large house on the residential lot which may not cover more than one-third of the lot (4,210 sf). If someone tried to build a 10,000 sf house on a 12,632 sf lot they would likely be referred to the MVC as a DRI. If someone tried to put 18,000 sf of building on the remaining 6,098 sf lot in the business district they would certainly be denied.
12. Any proposal that included a drive through would trigger the MVC DRI Checklist as a high traffic generating use.
13. The Oak Bluffs Zoning is silent on a number of the issues raised by this project for the simple reason that several aspects of this project were never contemplated (residential parking requirements in the business district, minimum lot size for residential in the business district, new multi-family housing, etc)
14. The Form A re-configuration of the parcel lines approved by the Planning Board in February of 2008 creating three lots should have been sent to the MVC as a DRI (DRI Checklist Section 3.201) and is therefore an action that the MVC should not recognize as valid. (See DRI 604 – The Shiretown Inn)
15. Note: The revised site plan does not accurately reflect the Form A lot lines or B-1 and R-1 Zones.

This document has been reviewed and confirmed by the Oak Bluffs Zoning Administrator and Building Inspector

\* The Chairman of the Oak Bluffs Planning Board had a different view on the status of lots in the Business District.