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# Decision of the Martha's Vineyard Commission

## DRI 663-M – Phillips Modification Decision

### 1. SUMMARY

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<u>Referring Board:</u>	Oak Bluffs Planning Board, Town of Oak Bluffs, MA
<u>Subject:</u>	Development of Regional Impact #663-M
<u>Project:</u>	To modify a 2016 MVC DRI approval to demolish an existing building and reconstruct a mixed-use building with eight apartments rather than eight hotel rooms.
<u>Owner:</u>	Phillips Realty Trust; Donna P. Leon and Susan P. Phillips, Trustees
<u>Applicant:</u>	Donna Leon and Susan Phillips
<u>Applicant Address:</u>	157 Pennsylvania Avenue, Oak Bluffs, MA 02557
<u>Project Location:</u>	30 Circuit Avenue, Oak Bluffs, MA Map 8 Lot 272 (5,990 sf / 0.1375 acre)
<u>Description:</u>	To modify a 2016 MVC DRI approval to demolish an existing 8,570 sf 1-3 story building (part of which was built in 1880) and reconstruct a 3-story 17,844 sf (with basement) mixed-use building in the historical style to eight apartments rather than eight hotel rooms.
<u>Decision:</u>	The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on February 15, 2018.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

### 2. FACTS

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The exhibits listed below including the referral, the application, 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. The Commissioners noted that this was the original intent of the Applicants but that they had to first clarify some issues with the town zoning. The town zoning was subsequently revised slightly in order to more clearly and specifically allow residential units above commercial units in the B-1 District.

#### 2.1 Referral

The project was self-referred to the Commission on December 27 2017 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, Section 2.1 (Modification to a previous DRI) which requires Modification Review by the MVC to determine whether the change is substantial enough to require a public hearing review as Development of Regional Impact. On February 15, 2018 the MVC voted that the proposed change was not substantial enough to require a public hearing review as a DRI and approved the modification with the clarification of the affordable housing offer (Condition 2.1) in Section 4 below.

### **2.3 The Plan**

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1. "Modification Narrative for DRI 663 – Phillips Hardware Mixed Use" consisting of one 8.5" by 11" sheet dated January 12, 2018; unattributed.
- P2. "Phillips Hardware, 30 Circuit Avenue, Oak Bluffs: Submittal Package" consisting of fifteen (15) sheets of 24" by 36" including site plans, floor plans, elevations, sections, and perspectives prepared for Phillips Hardware in Oak Bluffs by Sullivan + Associates Architects, 52 Narragansett Avenue, Oak Bluffs, MA 02557; dated January 25, 2018; Scale varies.
- P3. The original DRI 663 Decision, approved plans and DRI record are incorporated herein a part of the plan.

### **2.4 Other Exhibits**

- E1. Referral to the MVC by the Applicant; December 27, 2017.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, February 15, 2018.
- E3. Minutes of the Commission's Modification Review, February 15, 2018

## **3. FINDINGS**

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### **3.1 Project Description**

- The proposal is to modify a 2016 MVC DRI approval to demolish an existing 8,570 sf 1-3 story building (part of which was built in 1880) and reconstruct a 3-story 17,844 sf (with basement) mixed-use building in the historical style to eight apartments rather than eight hotel rooms.
- The modification consists of a change in the approved use of the residential portion of the project from a 'Hotel' use to an 'Apartment' use.
- The Modification also includes a potential third retail unit in the future within the Phillips Hardware space of approximately 1,000 sf and the clarification of the affordable housing offer required in the DRI 663 Decision.
- The existing 289 sf dugout basement would be replaced with a full 4,923 sf basement.
- The eight residential units would be accessed by a small lobby with stairs and elevator off of the alley (to be widened) and a second stair on the opposite side of the building on Circuit Av.
- As noted in the original DRI review, the project is located in the B-1 Zoning District and the Zoning By-Laws did not allow a viable apartment use of the property, but did allow a hotel suite use with rental period restrictions. The Phillips family accepted these restrictions at the time so that the project planning could proceed. It was noted at the time that it was always their desire to provide workforce rental opportunities in the residential units without the rental period restrictions created by the hotel use. On November 14, 2017, Oak Bluffs voted to change the Zoning By-Laws to allow an apartment use in the B-1 district.
- There is no change to the number or layout of the residential units, and there are no other substantive alterations to the project plans.

## **4. CONDITIONS**

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After reviewing the proposed modification to this Development of Regional Impact, the Martha's Vineyard Commission accepted the Applicants offer regarding affordable housing (2.1 below) and retained the other conditions from the original DRI 663 Decision (included below) . These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such

proceedings, shall pay the Commission's and/or Towns attorney's fees and costs incurred in obtaining judicial relief.

**1. Exterior Lighting**

1.1. A final lighting plan shall be submitted to and is subject to the approval of LUPC before construction begins. It will be based on the following principles: Exterior lighting on buildings shall be limited to that required by code; some additional security lighting may be needed for the alleyway entrance to the upper floors; any security lighting will be motion sensitive; and all exterior lighting shall be downward shielded.

**2. Affordable Housing:** In the original DRI 663 Decision the applicant was conditioned to come back to the MVC with a final proposal for addressing affordable housing prior to a Certificate of Occupancy being issued. On February 15, 2018 the MVC Approved the following condition addressing affordable housing:

2.1. As offered by the Applicant, two second floor apartments, one (2) bedroom and one (1) bedroom shall be dedicated to work force housing. The one-bedroom unit shall be dedicated as year round housing. The two-bedroom unit shall be rented for no less than a six week (1.5 months) increment, but ideally seasonal if not year round. The units shall be occupied by a minimum of 3 employees and a maximum of 6 employees.

**3. Wastewater & Storm Water**

3.1. As offered by the Applicant, the Applicant shall hook up to the Town of Oak Bluffs wastewater treatment system.

3.2. As offered by the Applicant, a final storm water management plan shall be submitted for the review and approval of the LUPC before site excavation begins. The proposal is to connect directly to the town storm water drain.

**4. Alterations**

4.1. As offered by the Applicant, there shall be no substantive alterations of the project's approved use or design without the approval of the Martha's Vineyard Commission.

**5. Noise:**

5.1. As offered by the Applicant, all mechanicals, HVAC, and exhaust fans will be located within the roofline and not visible from any public ways, or in an enclosed area to minimize the impact on neighbors.

**6. Construction Phasing Plans**

6.1. As offered by the Applicant, the Applicant shall prepare and submit to the Town Board of Selectmen (or such offices as they may designate) for approval a demolition and construction schedule and plan, designed to minimize disruption of day-to-day activities in the area.

**6. CONCLUSION**

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**6.1 Permitting from the Town**

The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

The Town building inspector shall not issue the following permits for this development until he has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following conditions in this Decision have been satisfied:

- No permit that would enable site excavation to begin until Condition 3.2 is satisfied.
- No building permit until Condition 1.1 is satisfied.

- No Certificate of Occupancy for second and third floors until Condition 2.1 is satisfied.

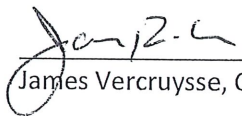
**6.2 Notice of Appellate Rights**

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 Oak Bluffs Town Clerk.

**6.3 Length of Validity of Decision**

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

**6.4 Signature Block**

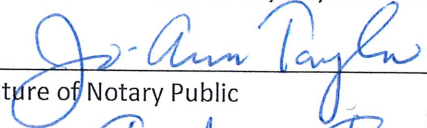
  
James Verduyse, Chairman

June 12, 2018  
Date

**6.5 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County

On this 12<sup>th</sup> day of June, 2018, before me,  
Jo-Ann Taylor, the undersigned Notary Public, personally  
appeared James Verduyse, proved to me through satisfactory evidence of identity, which  
was/were driver's license to be the person(s) whose name(s) was/were  
signed on the preceding or attached document in my presence, and who swore or affirmed to me that the  
contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

  
Signature of Notary Public

Jo-Ann Taylor  
Printed Name of Notary

My Commission Expires January 31, 2025

**6.6 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: June 13, 2018

Deed – Book 1469, page 494

Document Number: 00003220

Land Court Cert. Number: 13877