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Decision of the Martha's Vineyard Commission DRI 675– Westman/Franklin St. Historic Demolition

1. SUMMARY

- Referring Board:** Building Inspector, Town of Tisbury, MA
- Subject:** Development of Regional Impact #675
Westman/Franklin St. Historic Demolition
- Project:** To be permitted to demolish a house built in 1850.
- Owner:** Cees Van Eijk and William Westman
- Applicant:** William Westman
- Applicant Address:** 30 Littleton Road, Ayer, MA 01432.
- Project Location:** 29 Franklin St., Vineyard Haven, MA (Map 7N Lot 5 – 0.115 acres)
- Description:** The proposal is to demolish a house in Tisbury built in at least 1850 (possibly earlier). The Applicant has plans to build a similar style house on the footprint with dormers and a 816 sf addition. The Applicant said he and his partner originally intended to restore the house but when they got inside and began removing plaster and paneling they found the house to be too far gone to restore. The Applicant met voluntarily with the Tisbury Historic Commission (THC) on May 3, 2017 and made a number of modifications to the plans for the new structure to comply with the THC requests.
- Decision:** 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 June 1, 2017.
- Written Decision:** This written decision was approved by a vote of the Commission on June 22, 2017.

The permit-granting authorities of the Town of Tisbury 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

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, 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 proposed modification was referred to the Commission on March 9, 2015 by the Building Inspector of the Town of Tisbury, MA 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 8.2ii (Demolition of Building over 100 years old); a Concurrence Review. The Commission reviewed the project on March 16, 2017 and determined that a public hearing review as a DRI was required.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the MV Times, March 30, 2017.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on April 13, 2017 which was continued to May 18, 2017 and closed on that date.

2.3 The Plan

- P1 "New Remodeling for Van Eijk & Westman Residence: Front and Right Elevation – A3" consisting of one page of elevations for residence located at 29 Franklin Street in Vineyard Haven with proposed elevations from Franklin Street (Front) and School Street (Right). Prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA 02649. Scale: ¼" = 1' – 0". Date: 5/22/2017.
- P2 "New Remodeling for Van Eijk & Westman Residence: Rear and Left Elevation – A4" consisting of one page of elevations for residence located at 29 Franklin Street in Vineyard Haven with proposed elevations from the rear of the property (along School Street) and the Left (from neighboring property along Franklin Street) . Prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA 02649. Scale: ¼" = 1' – 0". Date: 5/22/2017.
- P3 "New Remodeling for Van Eijk & Westman Residence: Second Floor Plan – A2" consisting of one page of floor plan for residence located at 29 Franklin Street in Vineyard Haven with proposed second floor plan. Prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA 02649. Scale: ¼" = 1' – 0". Date: 5/22/2017.
- P4 "New Remodeling for Van Eijk & Westman Residence: First Floor Plan – A1" consisting of one page of floor plan for residence located at 29 Franklin Street in Vineyard Haven with proposed first floor plan. Prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA 02649. Scale: ¼" = 1' – 0". Date: 11/09/2016.

- P5 "Site Plan Tisbury, Mass. Prepared for William Westman" consisting of one page of site plan for residence located at 29 Franklin Street in Vineyard Haven. Prepared by Schofield, Barbini & Hoehn Inc, Land Surveying/ Civil Engineering, 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. 02568. Scale: 1" = 10'. Date: 12/17/2016.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector on January 19, 2017.
- E2. Staff Reports, by Paul Foley (MVC DRI Coordinator) with the assistance of other staff members.
- E3. Slide Show with plans, photographs, historical maps, GIS and Assessors information, Applicants narrative and images and other imagery prepared by Paul Foley (MVC DRI Coordinator).
- E4. Photographs of the site, taken on February 14, 2017 by MVC staff.
- E5. Letters from the following citizens:
 - a. Chris Baer;
 - b. Dana Hodsdon;
 - c. Hyung Suk Lee;
 - d. Jeffrey and Wendy Lott.
- E6. Letter from Harold Chapdelaine, Chairman of the William Street Historic District (WSHD) and the Tisbury Historic Commission (THC), dated May 12, 2017 with summary of THC/WSHD Meeting of May 3, 2017 including recommended Conditions for the demolition and reconstruction at 29 Franklin Street in Vineyard Haven.
- E7. Minutes of the Commission's Land Use Planning Committee meeting, February 2, 2017.
- E8. Minutes of the Commission's Land Use Planning Committee meeting, February 14, 2017.
- E9. Minutes of the Commission's Concurrence Review, March 16, 2017.
- E10. Minutes of the Commission's Public Hearing, April 13, 2017.
- E11. Minutes of the Commission's Continued Public Hearing, May 18, 2017.
- E12. Minutes of the Commission Meeting of June 1, 2017 – Deliberations and Decision.
- E13. Minutes of the Commission Meeting of June 22, 2017 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on April 13, 2017:

- Presentation of the project by William Westman and Cees Van Eijk.
- Staff reports by Paul Foley, MVC DRI coordinator.
- Oral testimony from Town Boards or members of Town Boards: Dana Hodsdon is on the board of the William Street Historic District (WSHD) and the Tisbury Historic Commission (THC), but spoke as a resident.
- Oral testimony from Public: Hyung S. Lee.

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- Staff reports by Paul Foley, MVC DRI coordinator.
- Oral testimony from Town Boards or members of Town Boards: Dana Hodsdon is on the board of the William Street Historic District (WSHD) and the Tisbury Historic Commission (THC), but spoke as a resident.
- Oral testimony from Public: Hyung S. Lee and Wendy Westman.

3. FINDINGS

3.1 Project History

- The proposal is to demolish a house in Tisbury built in at least 1850 (possibly earlier).
- The building was built in at least 1850 (possible earlier) in a Greek Revival farm house style. It has been in the Look family for a long time. Before that it was in the Luce family. The interior of the building has been gutted.
- The Applicant has plans to build a similar style house on the footprint with dormers and a 816 sf addition.
- The Applicant has said he and his partner originally intended to restore the house but when they got inside and began removing plaster and paneling found the house to be too far gone to restore.
- The Building is outside of the William Street Historic District by 2 houses.
- The house is not listed on the Massachusetts Historic Commission M.A.C.R.I.S. site.
- The Applicant met voluntarily with the Tisbury Historic Commission (THC) on May 3, 2017 and made a number of modifications to the plans for the new structure to comply with the THC requests which are included in this decision as conditions.

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 evaluating 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 the testimony presented and reviewing all documents and correspondence 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 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSAL WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposal at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the overall project will be a benefit because the new house will be in keeping with the original style and replace the historic but dilapidated building.

A2 The Commission finds that the proposal would have a minimal impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Wastewater and Groundwater, the Commission finds that that the impact is neutral.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the impact is neutral.

With respect to Night Lighting and Noise, the Commission finds that the proposal should have the same impact as other residential properties in the residentially zoned neighborhood.

A3 The Commission finds that the proposal would have a moderate overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the that the impact is neutral.

With respect to Scenic Values, Character, and Identity, the Commission finds that the proposal is a benefit because the proposed building will be an improvement over the dilapidated structure and that the design of the building is in keeping with the historic building and neighborhood.

With respect to the Impact on Abutters, the Commission finds that the proposal is a benefit.

A4 The Commission finds that the proposal would have a neutral impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

A5 The Commission finds that the proposal would have minimal beneficial impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission finds that the proposal is a benefit because it will generate increased property tax for the town.

A6 The Commission finds that the proposal would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

A7 The Commission finds that the proposal does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposal would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

B. THE COMMISSION FINDS THAT THE PROPOSAL 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.

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

The Commission notes that the Building Inspector stated at the Public Hearing that though there is some case law that supports the notion that willful demolition may constitute an abandonment of pre-existing non-conforming setbacks it has been the practice in town to allow reconstruction on pre-existing non-conforming footprints through a Special Permit from the Zoning Board of Appeals.

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 Commission finds that the project is not located within a DCPC.

In sum, after careful review of the proposal and the testimony presented by the Applicant and others, and the addition of condition, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of the considerations set forth in section 14(a) of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on June 1, 2017 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on June 1, 2017.

- **Voting in favor: Gail Barmakian, Trip Barnes, Rob Doyle, Fred Hancock, Joan Malkin, Linda Sibley, Ernest Thomas, and Richard Toole.**
- **Voting against: Lenny Jason and Ben Robinson.**
- **Abstentions: None.**

Based on this vote, the Commission approved the demolition as a Development of Regional Impact with the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission June 1, 2017 and was approved by vote of the Commission on June 22, 2017.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

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 conditions, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 **Exterior Materials:**

1.1 The Applicant shall use natural wood on the exterior of the building including the trim, fascia, soffit and frieze boards and shall not use Polyvinylchloride (PVC).

2 **Conditions adopted from the Tisbury Historic Commission:**

- 2.1 The applicant shall catalog exterior trim details with photography and full scale tracings and submit to the Tisbury Historic Commission (THC) prior to demolition. These details shall include: window and door sill, casing, headers, soffit, fascia, rake, frieze and crown moldings, clap board and wood shingle exposure as these will be replicated in the new building.
- 2.2 The applicant shall provide the THC finalized plans with roof slope and design emulating the modest [seaman's] Greek Revival homes that are of similar design within the William Street Historic District.
- 2.3 The applicant shall reduce the size of the second floor windows, make them smaller than the first floor windows, and submit for approval to the THC.
- 2.4 The applicant shall modify the addition making it subordinate to the main house by lowering the ridge while maintaining the same roof slope on both the main house and the addition. The implementation of small dormers will be entertained by the THC to accommodate expanded headroom. The new design shall be submitted to the THC for approval.
- 2.5 The applicant shall work on redesigning the Center Street elevation to reduce the mass of the shed dormer. Discussions included a Nantucket style dormer or multiple dormers. The applicant shall submit a new design for THC approval.
- 2.6 The Franklin Street elevation of the main house shall receive white painted clapboards with an exposure no greater than 3-1/2". The remaining elevations will receive wood shingles with an exposure not to exceed 5". The applicant may leave the shingles natural or stain them white.
- 2.7 The roof will be completed with GAF Timberline or equal black, slate or gray asphalt shingles.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Tisbury Officers and Boards for any local demolition or other permits which may be required by law. The permit-granting authorities of the Town of Tisbury may now grant the request for demolition 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 a Certificate of Occupancy for the new residence until it 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: 1.1; 2.1 - 2.7.

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 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 complete the approved demolition and begin substantial construction on the replacement building. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.3 Signature Block

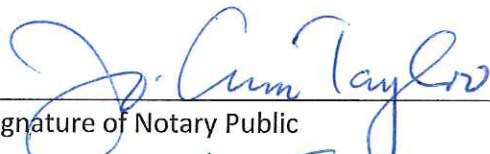

James Vercruyse, Chairman

7-6-17
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 6th day of July, 2017, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared James Vercruyse, 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 February 9, 2018

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 14, 2017
Deed – Book 1443, page 871