Redevelopment of Edu Comp Building
DRI 710

Post-Hearing LUPC
July 5, 2022
Redevelopment of Edu Comp Building

Applicant: Xerxes Agassi
Owner: 4 State Road MVY LLC
Permits: Special Permit, Building Permit, wastewater approval, State Highway Access Permit
Checklist: 3.1a (Commercial development of 2,500-3,500 ft²), 3.1b (New construction over 3,500 ft² including mixed use; mandatory review), 3.1f (Change of use or intensity of use), 4.1a (5 or more dwelling units), 4.1b (5 or more rooms for rent), 4.1c (5 or more dwelling units or rooms)

LUPC: 8/9/21 (no recommendation)
Site visits: 10/13/21, 4/9/22
Written record closed on 6/30/22
Additions to the record since 6/16/22

- Applicant offers
- Applicant response to final MVC questions
- Applicant attorney’s response to 6/16/22 letter from Erik Hammarlund
- Email from Wastewater Superintendent regarding conditional approval extension
- Correspondence
  - Jill Hansen
  - Joseph Grillo
  - Erik Hammarlund
Final MVC questions (responses provided 6/29/22)

1. Explain how signage and enforcement will be handled in regard to the parking spaces.

2. What is the proposed construction schedule (specifically, during the summer season)?

3. Having regard to the elm tree on the property line of the egress, is any construction activity proposed on the building façade or immediately adjacent thereto? Are there plans to improve the egress path and, if so, detail what is planned?

4. An applicant answer to a previous question indicated that further reduction of the mass and scale of the building addition would reduce the unit count which, per the response, would necessarily fall on the affordable/workforce housing offers. While this need not be the case, is the applicant’s reluctance to undertake any further reductions premised solely on a financial model which is not workable with fewer housing units? If there are other considerations, please detail.
Reference slides (6/16/22)
Draft condominium documents

• Modeled after Stone Bank condo documents, as revised/clarified with LUPC approval in Oct. 2021
  • *(Revisions/clarifications dealt with parking space assignment and sales, rental periods, and LUPC/MVC review in the event of changes.)*

• “In the case of the space assigned to the affordable unit (Unit R-3D), the cost of the space shall be included in the cost of the unit, with the total cost to remain affordable for income-qualified applicants earning no more than 80% of the Area Median Income for Dukes County. . . . The same applies to any subsequent sale of the affordable unit.”

• Units R-2B, R-3B, and R-4C would have no leasing restrictions.
Standard Clause - Subletting; Number of Occupants. Tenant shall use the Leased Premises as housing for its employees, and shall not assign or sublet any part or the whole of the Leased Premises except to its employees, nor shall Tenant permit the Leased Premises to be occupied for a period longer than a temporary visit, by anyone except Tenant’s employees, their spouses, and their children, without first obtaining on each occasion the written consent of Landlord. Notwithstanding any such consent, Tenant shall remain unconditionally and principally liable to Landlord for the payment of all Rent and for the full performance of the conditions and covenants of this Lease. The number of employees living in the Leased Premises at any time shall in no event exceed the maximum number of occupants permitted under Section 6 of the Lease. While it is Tenant’s intention that the same employees occupy the Leased Premises for the entire term of the Lease, the particular employees living in the Leased Premises may vary from time to time. Upon a written request made by Landlord, Tenant shall identify the names of the employees living in the Leased Premises at the time of the request. Landlord further acknowledges that such use by Tenant shall not be deemed a sublease of the Leased Premises.
Alternative Clause - Subletting; Number of Occupants. Tenant shall use the Leased Premises as housing for its employees and/or the employees of its contractors providing services for the Project, and shall not assign or sublet any part or the whole of the Leased Premises except to its contractors providing services for the Project and/or the employees of either of them. Tenant shall not permit the Leased Premises to be occupied by anyone except Tenant’s employees and/or the employees of its contractors providing services for the Project, their spouses, and their children. However, Tenant shall have the right without Landlord’s consent, but with notice to Landlord, to (a) assign this Lease to (i) an affiliate of Tenant, (ii) a successor to Tenant by reason of a merger or acquisition, or (iii) to any person acquiring the Project; and (b) to mortgage, collaterally assign, grant a security interest in, or pledge this Lease to one or more parties providing debt and/or equity financing for the Project. Notwithstanding any such consent, Tenant shall remain unconditionally and principally liable to Landlord for the payment of all Rent and for the full performance of the conditions and covenants of this Lease. The number of employees living in the Leased Premises at any time shall in no event exceed the maximum number of occupants permitted under Section 6 of the Lease. Landlord acknowledges that the particular persons living in the Leased Premises may vary from time to time. Upon a written request made by Landlord, Tenant shall identify the names of the persons living in the Leased Premises at the time of the request, and provide the make and license plate number of any residents’ vehicles which park on the Leased Premises.
Restricted Units, Units R-2A, R-2C, R-2D, R-2E, R-2F, R-3, R-3C, R-3D, R-3E, R-4A, and R-4B may be leased, but for not less than one week’s duration, and not more than three times in a calendar year. In the case of special circumstances caused by financial distress, illness, change in employment or other unforeseen matters, a unit owner may appeal to the Trustees for a waiver to this rental provision for additional specific rental periods. A two-thirds vote of the Trustees, as well approval by the Land Use Planning Committee of the Martha’s Vineyard Commission, shall be required to allow such additional rental periods. In addition, if a unit is not to be occupied by an owner for at least six months of the year, and is to be rented, the rental period shall be for no less than six months at a time. Units R-2B, R-3B, R-4C shall have no leasing restrictions.

This appears to contradict the standard and alternate clauses for subletting.
<table>
<thead>
<tr>
<th>Floor</th>
<th>Unit #</th>
<th>Description</th>
<th>Short Term Rental Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>R-2A</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>2</td>
<td>R-2B</td>
<td>2 Bedroom, 2.5 Bath, Kitchen/Dining/Living</td>
<td>Unrestricted</td>
</tr>
<tr>
<td>2</td>
<td>R-2C</td>
<td>1 Bedroom, 2 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>2</td>
<td>R-2D</td>
<td>2 Bedroom, 2 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>2</td>
<td>R-2E</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>2</td>
<td>R-2F</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>3</td>
<td>R-3A</td>
<td>1 Bedroom, 1.5 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>3</td>
<td>R-3B</td>
<td>2 Bedroom, 3 Bath, Loft, Kitchen/Dining/Living</td>
<td>Unrestricted</td>
</tr>
<tr>
<td>3</td>
<td>R-3C</td>
<td>2 Bedroom, 2 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>3</td>
<td>R-3D</td>
<td>2 Bedroom, 2 Bath, Kitchen/Dining/Living</td>
<td>Restricted - 80% AMI - Affordable</td>
</tr>
<tr>
<td>3</td>
<td>R-3E</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted - 150% AMI - Workforce 10 Yr</td>
</tr>
<tr>
<td>4</td>
<td>R-4A</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>4</td>
<td>R-4B</td>
<td>1 Bedroom, 1 Bath, Kitchen/Dining/Living</td>
<td>Restricted</td>
</tr>
<tr>
<td>4</td>
<td>R-4C</td>
<td>3 Bedroom, 3 Bath, Kitchen/Dining/Living</td>
<td>Unrestricted</td>
</tr>
</tbody>
</table>
Draft offers

• We offer short term rental restrictions on 11 of the 14 residential units – thus 78% of the units would be short term restricted. The 3 unrestricted units will help offset our offer to allocate units for workforce usage.

• All units rented to island businesses for employee usage for be fully restricted and not allow any short term rentals per the language in the leases. . . . Any remaining restricted units will have language in the condo docs limiting short term rentals and in any leases.

• We offer to engage The Public Archeological Laboratory, Inc. (PAL) to review final storm water plans and follow their advice and recommendations which they deem appropriate with regard to lowest the depth of stormwater chamber.

• We offer to engage an island based arborist and follow their recommendations so as to seek guidance and follow their recommendations in our efforts to save the tree throughout the construction period. If despite our best efforts we are unsuccessful in saving the tree – we offer to commit to replacing the tree with a new tree in kind.
Existing cherry tree

- garden
- ramp
- brick
Existing cherry tree (approximate canopy)
Reference slides (5/12/22)
Additions to the record since 4/14/22

• Repackaged plan set (most current)
• Revised stormwater plan
• Final comments from FPES regarding stormwater plan
• Final traffic study (no significant changes from draft)
• Revised ADA ramp
• Draft condo documents, including draft language regarding sublets
• Applicant statement/offers regarding cherry tree
• Update from applicant’s attorney regarding easement
• Amendment to housing MOU with Vineyard Wind
• Updated staff report
• 2 letters from the public
Repackaged plan set

- Existing site plan
- Lot coverage and access plan
- Parking plan
- Construction fence plan
- Scheme reduction plan
- Lighting plan
- Revised stormwater plan
- Floorplans and elevations
Revised stormwater plan
Revised stormwater plan

STORMWATER MANAGEMENT:
- Design Storm: 25-Year
- Duration: 24 HR.

Dukes County:
- 25-Year, 24-HR Storm = 5.8".

Soil Permeability Below 8'-0" estimated to be 0.001 bbl/ft.

Revised stormwater plan
FPES comments 5/2/22

1) Submitted plans and calculations provide sufficient information and detail to determine that the designed stormwater system will provide adequate capacity to mitigate the 25-year design storm event. Additional changes to the plan have resulted in a level of detail that adequately depicts the systems components.

2) We recommend that the Town require the applicant to submit a detailed As-Built plan upon completion of the project. The plan should indicate all inverts, rim elevations, pipe lengths and sizes, structure dimensions and any other relevant information. The plan should be certified and stamped by a licensed professional.
RIGHT ELEVATION

ADA RAMP WITH FLAT PLATFORMS EVERY 30FT
Draft lease language

- A draft condominium declaration of trust and master deed have been provided.

- “Units R-2A, R-2C, R-2D, R-2E, R-2F, R-3, R-3C, R-4A, and R-4B may be leased but with restrictions (‘Restricted Units’). All leases and rental agreements shall be in writing and shall be for an initial term of no less than six months. Except with prior written consent, leasing restrictions will limit the rental of these Restricted Units for not less than one week’s duration, and not more than three times in a calendar year.”

- Sample language: “Tenant shall use the Leased Premises as housing for its employees and/or the employees of its contractors providing services for the Project, and shall not assign or sublet any part or the whole of the Leased Premises except to its contractors providing services for the Project and/or the employees of either of them. Tenant shall not permit the Leased Premises to be occupied for a period longer than 30 (thirty) days by anyone except Tenant’s employees and/or the employees of its contractors providing services for the Project, their spouses, and their children.” (Master Deed – sample language)

- The applicant has clarified that the affordable unit and income-restricted workforce unit would also have similar restrictions. The remaining three apartments would be unrestricted.
Standard Lease Language Samples – Subletting: Number of Occupants

**Subletting: Number of Occupants** Tenant shall use the Leased Premises as housing for its employees, and shall not assign or sublet any part or the whole of the Leased Premises except to its employees, nor shall Tenant permit the Leased Premises to be occupied for a period longer than a temporary visit, by anyone except Tenant’s employees, their spouses, and their children, without first obtaining on each occasion the written consent of Landlord. Notwithstanding any such consent, Tenant shall remain unconditionally and principally liable to Landlord for the payment of all Rent and for the full performance of the conditions and covenants of this Lease. The number of employees living in the Leased Premises at any time shall in no event exceed the maximum number of occupants permitted under Section 6 of the Lease. While it is Tenant’s intention that the same employees occupy the Leased Premises for the entire term of the Lease, the particular employees living in the Leased Premises may vary from time to time. Upon a written request made by Landlord, Tenant shall identify the names of the employees living in the Leased Premises at the time of the request. Landlord further acknowledges that such use by Tenant shall not be deemed a sublease of the Leased Premises.

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Existing cherry tree

garden
Existing cherry tree
Access alternative 1
Access alternative 2
Site visit photos 4/9/22
Yellow = Edge of recessed entryway
Yellow = Edge of recessed entryway
Green = Edge of landscaped area
Blue = Roofprint (recessed top floor)
Orange = Footprint
Yellow = Outside edge of walkways
White = Parking spaces
Blue = Roofprint (recessed top floor)
Orange = Footprint
Yellow = Outside edge of walkways
White = Parking spaces
Purple = Edge of proposed driveway
Blue = Roofprint (recessed top floor)
Orange = Footprint
Yellow = Outside edge of walkways
White = Parking spaces
Proposed grade changes

12.2 → 13.5

~14 → 13.5

~15 → 13.5

~10-11 → 12
Purple = Edge of proposed driveway