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Martha's Vineyard Commission Land Use Planning Committee Minutes of the Meeting of February 5, 2007

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 P.M.

Commissioners Present: Christina Brown; John Breckenridge; Chris Murphy; Jim Powell; Richard Toole; Susan Shea; and Peter Cabana.

MVC Staff Present: Mark London; Paul Foley; Bill Wilcox; and Jim Miller.

Present for the Vineyard Haven Yacht Club for the discussion of the first part of item 1: Dick Barbini (Schofield, Barbini, and Hoehn, Engineer), Charlie Felder (Manager of VHYC), Ray Maciel (Contractor)

1. DRI Checklist Review

The purpose of this meeting is to consider clarifying three items in the Checklist that are somewhat vague. The Commission could issue a clarification now, and revise the wording when the Checklist is revised in the spring.

- 1) Existing Square Footage: Should the MVC give applicant's credit for their existing square footage when they plan to demolish or otherwise replace an existing building?
- 2) Mixed-Use Developments: Should the MVC count residential square footage in the calculation of square footage?
- 3) "...create or accommodate...": (Section 3.401) Does "accommodate" mean that if someone has three units and they add one they are now accommodating four - thus triggering MVC? If they already were approved as a DRI with 20 units and add one more, does it have to come back as a mandatory referral because it accommodates more than four units, or only as a concurrence under "once a DRI, always a DRI".

1) Existing Square Footage

Should the applicants get credit for their existing square footage when they plan to demolish and replace an existing building?

An example of this issue is the Vineyard Haven Yacht Club, which plans to demolish two buildings of a total area of 3,500 sf and build a 4,400 sf replacement building, for a net increase of 900 sf.

The relevant Checklist item is:

3.6 Private and Public Facilities and Places of Assembly

3.601 Any development which proposes the creation of a health, recreational or educational place of assembly, or governmental or other publicly owned or quasi-publicly owned facility of 2,000 square feet or more and which is designed to serve the residents of more than one Town.

Mr. Barbini described the yacht club project:

- He showed pictures of the existing building (one-story), sketches of the proposed building (two-stories), as well as historic photographs of the original yacht club (known as the Casino) that was also two-stories tall.

- The proposed footprint would be similar to the existing. The structure would be about 28 feet tall in a zone that allows up to 35 feet.
- The 100-year flood line is at the 9-foot contour. This is not in the Coastal Zone DCPC.
- Mr. Barbini cited a similar instance in 2003 when Mink Meadows proposed to demolish an existing 3,400 sf building and wanted to rebuild a 4,200 sf building. The MVC said at the time that it was not a DRI.
- He said that section 3.601 says the “creation” of 2000 square feet, but the Club already exists so it is not being created and the additional square feet do not reach the MVC threshold.
- There is no restriction on increasing the number of members though, for the last five years they have only accepted the same number of new members as those that have left.
- The project will be reviewed by the Zoning Board of Appeals.

In the case of the Yacht Club, we have to differentiate between two issues: 1) Does it now trigger a mandatory referral under section 3.601? 2) If it were sent as a concurrence, (not currently possible,) would the Commission want to see it?

An increase of 900 sf has only a marginal impact from many points of view (traffic, water use, impact on abutters, etc.). However, its physical impact is a new 4500 sf structure that can be viewed from the Sound. In the case of the Vineyard Yacht Club, this proposal could well improve the appearance and the project will be reviewed by the ZBA. However, the Checklist should also deal with the situation where it is proposed to replace a harmonious building with a large inappropriate one that might not be subject to any other review at the town level.

The interpretation of whether the MVC gives credit for existing square footage would also affect several other DRI triggers. It is important to have a clear principle that can be applied consistently. We have to consider the worst-case scenario.

A general concern with having a threshold deal with net instead of gross area is that it could lead to incremental development. Theoretically, someone could build 20,000 sf club building, in 1,999 sf segments in order to avoid the MVC. In fact, the building inspector would probably refer it at the time of the application for the second addition. A way to deal with this would be to consider the net area where the existing building had been there for some substantial period of time.

A Commissioner said that the Commission has subtracted existing square footage in the past. The Martha's Vineyard Shipyard was torn down and rebuilt across the road and the MVC gave them credit for the old square feet (1989-90).

There is no standard definition of demolition. In Oak Bluffs, 50% of an existing building must be preserved; otherwise it is considered demolition. In Edgartown, the whole building can be demolished proved 25% of the exterior walls are reincorporated into the new building. In the DRI Checklist, under definitions 2.14, “development” includes “any material change in the use or appearance of any structure or in the land itself...” and also includes “demolition of a structure”.

It was agreed that LUPC should recommend that the Commission clarify the interpretation (subject to Commission Counsel agreeing that this is an appropriate way to proceed).

Jim Powell moved and it was duly seconded that LUPC recommend that the Commission clarify that item 3.601 of the DRI Checklist apply to the net increase of floor area to the original building (i.e. was there before the Commission was created). In favor: Jim Powell, Richard Toole, Pete Cabana, Susan Shea and Christina Brown. Opposed: Chris Murphy and John Breckenridge. Abstention: Linda Sibley. The motion passed.

If the Commission adopts this interpretation, it is suggesting to the Tisbury Building inspector that he does not need to refer the Vineyard Yacht Club to the MVC.

There was a consensus that the MVC should revise the Checklist to require that buildings of a certain size, especially if they are very visible, should be referred on a concurrence basis. The area calculation could be based on a gross area of 2000 sf or an addition of 1000 sf over the original construction, similar to commercial buildings.

2) Mixed-Use Developments: Should the MVC count residential square footage in the calculation of square footage? Section 3.301a and 3.301b can be interpreted in different ways. Does 3.301a mean any development over 2,000 sf with commercial as part of it or on commercially zoned land must be referred as a DRI? Or does it mean any development of commercial, office, storage, or industrial over 2,000 sf not including the residential square feet? For example should mixed-use projects with a total of more than 2,000 sf but less than 2000 sf of commercial be referred?

Recent examples include 21 Kennebec in Oak Bluffs and 117 Beach Road in Tisbury, and we now have an inquiry about a proposed new building by Leo Convery at 256 Edgartown-Vineyard Haven Road in Edgartown.

It was agreed by consensus that LUPC recommend that the Commission clarify that the residential space be excluded from the area calculation in items 3.301a and 3.301b provided the residential space is permanently deed-restricted to remain as residential.

The third item will be discussed next week.

Adjourned 7:00