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## **Martha's Vineyard Commission**

### **Land Use Planning Committee**

### **Draft Notes of the Meeting of February 9, 2009**

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

*Commissioners Present: Linda Sibley (Chair); John Breckenridge; Christina Brown; Chris Murphy.  
Camille Rose (non-eligible Commissioner observing)*  
*MVC Staff Present: Paul Foley; Mark London; Christine Flynn*

#### **1. Muckerheide (DRI 615) Post-Public Hearing Review – LUPC Summary**

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Note: The LUPC recommendations are in this Summary. The full notes appear on the following pages.

##### **Offers and Conditions**

LUPC voted to recommend acceptance of all the Applicant's offers and the following additional conditions.

- 1) Lighting: A detailed lighting and landscaping plan shall come back to LUPC for review and approval before a Certificate of Occupancy is issued.
- 2) Housing: The Condominium Master Deed shall be submitted to and is subject to the approval of the LUPC before site work, demolition, and/or construction begins. (Modifies the offer which says before a Certificate of Occupancy is issued.)
- 3) Building Design: Exterior materials shall be natural white cedar shingles, painted wood siding, or fiber-cement siding, with traditional trim and other detailing.

LUPC asked Staff to draft a possible condition relating to the alternative sketch that was submitted before the public hearing was closed. LUPC did not make a recommendation as to the desirability of this approach.

- 4) Building Design: The design shall be revised in order to reduce the visual scale and impact on abutters, and to harmonize with the neighborhood, while keeping essentially the same proposal and floor plan. It shall be based on the last proposal submitted by the Applicant, with the central portion of the building set back at least ten feet, with each side expressed as a distinct volume with gable roofs, and with dormers set back sufficiently to minimize their visual impact (e.g. using the City of Cambridge's Design Guidelines for Dormers).

The Applicant made the following additional offer at the meeting.

- 5) Parking: Parking shall be limited to the occupants of the building and their guests. Parking spaces cannot be rented out to others.

After the meeting, applicant clarified his offers by adding the following.

- 6) Housing: Whereas the purpose of this Community Housing Project is to provide housing for Island residents, the Condominium Master Deed shall restrict the short-term rental rules to owner occupants. Should an owner choose to move away and rent their unit said rental shall be limited to year-round use and the tenant shall not be allowed to sublet said unit.

The Applicant was asked to clarify how the use of the roof deck would be limited to protect the peace and quiet of the neighborhood.

## **Benefits and Detriments**

The benefits are:

- It provides housing at a moderate initial price level (about 140% to 150% AMI). This is needed on the Island, though the greatest need is at the 80-100% AMI range
- The higher density takes advantage of the fact that it is in a B-1 zone, one of the limited areas which permit apartment buildings.
- This is the appropriate place for a high-density building.
- It effectively deals with wastewater and energy.

The detriments are:

- It is a very large structure in a neighborhood that is made up of mostly more modest buildings.
- The "hotel" design, though used historically elsewhere in Oak Bluffs, is not in character with this neighborhood.
- There is no long-term affordability or assurance that the building will be occupied by year-round residents.
- There is a restricted amount of business zoned land on the Island and this is not a business use.

## **Recommendation**

The LUPC did not make an overall recommendation to the Full Commission.

## **1. Muckerheide (DRI 615) Post-Public Hearing Review – LUPC Notes**

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**Applicant:** Violet Realty Trust, Donald N. Muckerheide (Trustee)

**Project Location:** 114 and 116 Dukes County Ave. Oak Bluffs, MA Map 17 lots 22 and 24.1 (0.15 + 0.12 = 0.27 acres total)

**Proposal:** The proposal is to demolish the entire existing structure and build a single new 12,276 sf (66' x 62' x 3 stories) building with twelve (784 sf) two-bedroom units to be sold for no more than \$350,000 per unit.

### **Staff Report:**

- Paul Foley went over the materials that were submitted during the month that the written record was left open between January 9 and February 5, 2009.
- They included:
  - Revised Offers signed on February 5, 2009.
  - Revised Staff Report dated February 5, 2009.
  - A letter from Walter Isaacs.
  - A letter from David Wilson.
  - A revised sketch by the Applicant reflecting suggestions made by Mark London that transform the single volume with the mansard roof into two smaller volumes with gables. (The Applicant said that while he prefers his present design proposal, he offers the alternative as a choice for the MVC if that is what it prefers.
  - The proposed floor plan with markings showing how the alternative plan would need to be slightly altered to work.
  - An elevation of the MVC approved Bradley One (DRI 612, June 2008) superimposed on the Muckerheide mansard proposal (prepared by MVC Staff).
  - Three Streetscapes – existing, with Bradley Square as approved, and with both projects as proposed (prepared by MVC Staff)
  - Three graphs comparing building sizes on Dukes County Avenue (prepared by MVC Staff).

### **Commissioner Discussion:**

- Commissioner Breckenridge said he feels strongly that we need to move ahead with what we have. He felt that the proposal is a floating target. It was pointed out that the design has been modified in response to MVC concerns. Chair Sibley noted that both designs were on the table before the public hearing closed.
- Commissioner Murphy had said whatever we decide we need to write it out clearly. He reiterated that that the MVC should make recommendations that are easily understandable and enforceable.
- Commissioner Brown asked if the Oak Bluffs zoning in the B-1 allows this; the question of density has been floated around. This is quite a number of housing units on one lot.
- Staff said the proposal conforms to zoning.
- Don Muckerheide said that this is the B-1 and could be a apartment building or a hotel.
- Commissioner Breckenridge said it was not our job to interpret zoning. He was corrected by Chair Sibley who noted that we must find that the project conforms to zoning.

### **Offers and Conditions:**

#### **Lighting**

- Chair Sibley said that the lighting offer is similar to what we usually cover.

- Commissioner Breckenridge said that we usually have a note about only lighting as required by building code.
- It was noted that we could add a condition that the Applicant must submit a lighting plan to the LUPC before a Certificate of Occupancy is issued.
- Commissioner Brown said she thinks we should accept the offers and require a lighting plan that comes back to LUPC for any other lights.
- Chair Sibley felt that we should add a detailed lighting and landscaping plan to come back to the LUPC. There is not an offer about landscaping here but there was testimony. There is a plan that shows where plants will be located.
- Commissioner Breckenridge said that the landscape plan from the original had elements that would carry over. Like lighting, the landscaping plan should come back to LUPC.
- Don Muckerheide clarified that there would not be lights other than at the doorway entrance. On the original plan the species are listed. Paul Foley said he would locate that and post it to the MVC website for Thursday.

## **Housing**

- Chair Sibley reviewed the offers related to housing:
  - He will pay the mitigation fee of \$106,060.
  - He will limit the initial sales price to no more than \$350,000.
  - Weekly rentals will be prohibited
  - Sub-lets will be limited to a minimum of 30 days and no more than twice a year per unit.
- Commissioner Breckenridge said that we should have a condition that no site work can commence until we have had a chance to look at the Condominium Documents and the Master Deed. He wants to be as detailed about what we're getting into ahead of time.
- Chair Sibley asked if he was suggesting that the Condo Master Deed should be subject to approval before construction begins. Commissioner Breckenridge answered yes.
- Commissioner Murphy added that he understands that Mr. Muckerheide wants to know what is being required and what is approved before he gets into this. Mr. Muckerheide said that he needs to have certain approvals before he can get financing.
- Commissioner Breckenridge made a motion to add a condition that changes the offer that the Condominium Master Deed should be submitted before site work and construction begins as opposed to the offer which says before a Certificate of Occupancy is issued.
- Commissioner Brown said she was not sure she has enough information to make a decision. Everybody who buys one of these will know that they cannot rent it out. But the mechanism is new. Are we sure that this will work?
- Don Muckerheide clarified that the Condo Master Deed lays out the rules of the game before someone buys one of the units.
- Commissioner Breckenridge said that he thinks we need to have Counsel look it over.
- Commissioner Murphy said that the devil is in the details. The other major detail is this document. Until we see it we are missing a critical piece of detail.
- Commissioner Brown suggested we make that condition read that the Condominium Master Deed or other documents that secure the restriction shall be submitted for review and approval by LUPC before construction begins.
- Commissioner Breckenridge said our goal is the limitation of short term rentals.
- Don Muckerheide suggested that the MVC have their counsel look over these conditions and see if they can be imposed through the condo documents. He will tell you yes, this is very easily done.

- Linda Sibley said that Doug Sederholm was concerned with whether or not the condo document was the correct vehicle.
- Commissioner Brown suggested maybe it could be the Building Permit. In this case he is going to have to go through a lot of paperwork.
- Commissioner Breckenridge worried that then he would be able to do site work before the building permit was issued. He wanted to stick to his original motion that said that neither site work nor construction may commence before we look at these documents.
- Commissioner Murphy suggested that we could just add site work and demolition to that.
- Don Muckerheide said that could impact financing the project. Before construction begins is one thing but prohibiting site work is another thing.
- LUPC agreed that we must have the Condo Documents before site work and construction begins.
- Chris Flynn said that maybe we should request MVC Counsel to look at all of the conditions before the written decision.
- Commissioner Murphy asked Christine where \$350,000 falls within the Average Median Income (AMI) limits.
- Chris Flynn said that \$325,000 – 350,000 was about the fair market for two bedroom apartment. In terms of affordability it was about 140% AMI or people earning \$85,000-\$95,000.
- Commissioner Breckenridge asked if that was in today's dollars.
- Chris Flynn said that was in July when we did the numbers for Bradley Square and Muckerheide. The affordability is the same. That has not changed.
- Don Muckerheide clarified that is if the units sell at \$350,000 which is the highest they could be sold for. They may sell for less.
- Chair Sibley noted that we have Surfside before us and they want to condominium the hotel. They are talking about one-bedroom apartments which can explicitly be rented out on a daily basis.
- Commissioner Breckenridge noted that this was not part of the public hearing.
- Chair Sibley felt that general information that is public knowledge could be used in deliberation. She deferred for the moment saying that she would like to know from Counsel if we can consider comparables of relative affordability during deliberations.
- Commissioner Brown asked if the last offer, about marketing the units on island first, was for the first marketing. Don Muckerheide answered that yes that is for the first marketing.
- Don Muckerheide added FYI that his research into condominiums shows that there is nothing comparable and livable to what he is proposing. The existing stock in that range is mostly from the 1970's and is intended for renting out on a short time basis. You have to keep in mind that the hotels are a business. In a condominium document it becomes an association on its own. This is not like Island Housing Trust who owns the land forever. In this arrangement the Condominium Association becomes the owner and they maintain the building and the grounds. Everybody owns a twelfth of the property. Anything similar to this is well over \$400,000.

### **Building Design**

- Commissioner Breckenridge said he does not like the Commission playing architect but we have benefited in the past by having peer review. Even though this does not fall within a historical district he wants to motion that vinyl siding would not be permitted. The building should have trim boards. He wrote a condition for another project that said the project should go to the Cottage City Historical District for review and that they should approve it. The applicant said that he was prepared to have the design reviewed by a board that had expertise, and Cottage City has a resident architect on board.
- Commissioner Brown asked if we know whether all of the buildings in that area are all wood.

- Paul Foley said that there is a variety of siding types in the neighborhood.
- Mark London said that all the older buildings are wood shingle or siding, though there are a few cases of some vinyl siding being added.
- Chair Sibley said she thinks that the MVC cannot give powers to a local board.
- Commissioner Breckenridge said that we would not be giving them new powers we would just be asking for recommendations and the ultimate decision could be by LUPC.
- Commissioner Murphy said it seems to him that the time has passed for that. The town has had every opportunity to comment and they have not.
- Mark London said that in terms of process, the MVC cannot simply turn over the review to another board, but it could spell out what it is looking for in its conditions and have another entity make the determination as to whether the conditions had been met. He had talked to David Wilson who was not keen on doing it. We can say that final architectural plans come back to LUPC, and at that time LUPC can ask for expert comment, such as from the CCHD.
- Commissioner Breckenridge would like the MVC to require that the applicant submit the final plans to the CCHD to review the scale, materials, and their comments should be forwarded to LUPC.
- Commissioner Brown said that Town boards that have interest could have commented during the process; it is too late to impose this. The way it is written it gives those boards power over a project that is before us.
- Don Muckerheide clarified that he was not going for vinyl for cost savings; he did it for maintenance. He is now looking at clapboard that is a composite that looks just like clapboard but is fire retardant. From the perspective of green construction, this is much more energy efficient than wood clapboard or cedar shingles. He said that he has always said that there would be trim and j- joints so that it looked exactly like a clapboard-sided building. A large shingled building would be dark. He said that he would be fine if the MVC wanted to add a condition that the siding should look like traditional clapboard. He said if it is done right, you cannot tell the difference.
- Chair Sibley asked if he was willing to say that the design is going to look like a traditional building.
- Commissioner Breckenridge said as long as he is offering that it is not vinyl siding.
- Don Muckerheide said that you can do vinyl that you cannot tell. Vinyl is not what it used to be. He said his concern is the long-term affordability
- Mark London suggested a condition that says:
  - Exterior materials shall be natural white cedar shingles, painted wood siding, or fiber-cement siding, with traditional trim and other detailing.
- He noted that the hospital was going to use fiber-cement boards.
- Commissioner Murphy said he was all right with the proposed condition as long as the CCHD is left out. He asked if he could add a condition that parking is limited to the occupants of the building and their guests and they can not be rented out to others.
- Don Muckerheide said that was fine and that he would not even consider allowing people to rent out their parking spots. He reiterated that his goal for this project is residential housing.
- Commissioner Brown Seconded the Motion to limit the parking to residents. So voted.
- Commissioner Breckenridge said he would like to limit access to the roof deck to 9 pm.
- Commissioner Brown noted that with the Oyster Bar it backed up to the Campground.
- Mark London asked what if one of the residents wants to look at the stars.
- Commissioner Brown suggested that there could be a limit of no more than four people after 9 pm.
- Chair Sibley suggested that the Condo Master Deed should come back with some form of restriction that will protect the peace and quiet of the neighborhood.
- Don Muckerheide clarified that these will be residential apartments; this will not be a hotel.

## **Benefit and Detriments:**

- Commissioner Murphy said that the island benefit is that it would be providing housing at a level that is needed. The detriment is that it is a very large structure in a neighborhood that is made up of mostly smaller buildings.
- Commissioner Brown agreed with those being the primary benefits and detriments. She agreed with Linda that since the applicant brought us this alternative sketch before the public hearing closed then we could consider it.
- Chair Sibley suggested that we could say that the proposal is a building that looks like an 1890's Oak Bluffs Hotel in a style that has precedence in Oak Bluffs.
- Mark London said that there were hotels downtown and facing the harbor, but that does not mean they are appropriate everywhere. The argument against a building of this scale on Dukes County Avenue is that the other buildings are not so wide and not so high. The thought with the alternative sketch was that you could make it appear as two separate volumes, each similar to the large houses in the neighborhood. It would be similar to his sketch with the middle part of the building and the dormers recessed.
- Chair Sibley commented that would be telling him to do a third thing.
- Commissioner Breckenridge said that before we go into philosophy and detailing he would like to say that it strikes him that this neighborhood is essentially a 1.5 to 2.5 story neighborhood. He feels that the massing is too large for the neighborhood. This is a 3-story proposal and he would not be in favor of it with either design. Bradley Square, he said, was now only 2 stories.
- Commissioner Brown said that the issue of massing has been to some degree addressed by the alternative design.
- Commissioner Breckenridge said that breaking it into two parts helps a little, but the issue for him is the height.
- Paul Foley pointed out the Bradley Square may have lost a story but the height was only dropped 4 feet, from 32 feet tall to 28 feet tall.
- Mark London said that the revised design should read like a pair of 2½ story buildings, similar to Pik-Nik.
- Commissioner Brown said that it does not look like the older neighborhood buildings but it does look a lot like the Bradley One building that the MVC approved and the one that is proposed, so the Muckerheide is less out of character with what the street will be.
- Commissioner Murphy said that his problem is not with the design, it is the size. I think changing this design to fit in is just putting gilding on it that is unnecessary.
- Chair Sibley said that perhaps Thursday night we can get an indication what the commissioners say. She has concerns about the overall density but is ambivalent about that because she does not think that we are going to have cheap land on the Vineyard in the future. In other words proposals in the future are going to be higher density. Her greatest concern about the proposal is whether or not we can be reliably certain that year-round Islanders are going to be the ones buying these condos. Someone from off-Island with a lot of money would be happy to buy a condo here, even with a restriction on short term rentals. That lack of absolute certainty that the goals of the project will be achieved is her main concern.
- Commissioner Breckenridge said he is very concerned about the aspects of the long term affordability. We heard testimony from Pat Manning that what is needed is units in the 80-100% AMI range.
- Commissioner Brown said she is concerned with us tossing around this idea that the density is too great. If the MVC is going to say that, we need to have some evidence that it is too dense in this location. Her impression is that this is not too dense. There is a very narrow business zone in which

you can have very dense building. She does not want to see any more new business zones so it seems to her that we want our high-density projects in the existing B-1 zones. This is the appropriate place for high-density buildings.

- Commissioner Breckenridge said that we wrestled with this at the Oyster Bar. There are some sections of Circuit Avenue where there are big buildings, but having a similar large building farther up the street would not have fit in. Just because zoning says you can do it does not mean that the Commission has to approve it.
- Commissioner Brown asked if the MVC is going to apply an unwritten policy that says that any new building has to look like the buildings that already exist in terms of architecture, size, and density.
- Chair Sibley said she thought one interesting piece of testimony was that there is a restricted amount of business zoned land on the island and here is a use that is not business. So your point is that even though it is not business it is one of the uses that is allowed in that zone.
- Don Muckerheide noted that this project has an efficient use of space and materials, and that Brian Packish has a tall building across the street as does the old Catholic Church nearby.
- Commissioner Brown said that hopefully the wording on the landscaping plan that he submitted will further specify using local species for bushes and street trees, as modified to fit the current proposal. Commissioner Sibley said that there wasn't a problem having non-native species around the property. The critical issue is the choice of street trees.

### **Recommendation**

The LUPC did not make a recommendation to the Full Commission.

Adjourned at 7:00