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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of June 21, 2010

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

Commissioners Present: Linda Sibley; Christina Brown; Ned Orleans; Chris Murphy; Fred Hancock; Doug Sederholm;

MVC Staff Present: Paul Foley; Mark London; Bill Veno;

Audience: Mark Wallace

1. DRI Interpretations

- a. Places of Assembly
- b. Beer and Wine
- c. Little House Café

Places of Assembly

- o Mark London explained that Mark Wallace was here because he is planning to use the second floor of the new Ocean Club (formerly known as Dreamland, Balance, and Danny Quinn's) as a function hall.
- o Upstairs he wants to do a reception hall. It was a dance hall and game room in the past.
- o The question is does that qualify as a change of use under the DRI Checklist.
- o In cases where there needs to be clarification the Compliance Committee has said it has to come to LUPC.
- o We have two things that are here for Change of Use.
- o Linda Sibley added that we may have other items. In this case she also asked about the old decision. She thought this was not a hypothetical we are looking with this one but a specific question.
- o Mark Wallace explained that the building is a condominium. The upstairs has been everything from a dance hall to a game room to a roller rink. He and his brother have acquired it since the balance decision. He is here trying to get clarification of whether or not the project needs to be reviewed by the MVC. The Selectmen are concerned whether they need to refer it. He has a huge amount of support in the community. He has an issue with his next door neighbor, who ironically was the one that originally proposed the Dreamland DRI project in 1989.
- o Mark could sell the upstairs as four condos and call it a day. He added that is not his style, he doesn't just buy and develop and run. He has no idea if this is even going to make money. It's a huge space sitting empty. They have reasonable terms in their mortgage to try it out for a few years.
- o Chris Murphy noted that the Wallace brothers own the first unit downstairs and now they bought the second unit upstairs. The town has agreed to extend the liquor license upstairs to the newly purchased unit. It seems clear that this is an increase in the intensity of use.
- o Linda Sibley questioned whether it is an increase in intensity of use or just an extension of the license.

- Chris Murphy asked how it could not be an expansion if the ownership and license used to be just down stairs.
- Mark London said that Mark Wallace's argument is that 6,000 sf has been there for a hundred years. From a land use point of view it was a place of assembly and it would still be a place of assembly. Using an existing space is different than creating new space.
- Chris Murphy countered that then that would mean if a different party came and bought the existing but empty space in the second unit we would not even be talking about it. Of course we would.
- Mark Wallace said they tried to use it last year. The sewer commission made a mistake. They originally rated it as a t-shirt shop. If he had bought it free standing the capacity is 500 people based on exits. By square footage the capacity would be over 700 if it weren't for the lack of exits.
- Linda Sibley thought that the vehicle traffic is going to be quite different for a function room than for a game room. For a function everyone comes at the same time. For a game room they trickle in.
- Mark Wallace said the room may be used for teen nights and town functions. When the property came to the MVC as a DRI in 1989 the only questions were what they were going to do with the kids.
- Mark London said he spoke to Eric Wodlinger and the question was what the different use categories are. There is a difference between places of assembly from a building point of view and a fire exit point of view.
- Linda Sibley said she thinks there is a big overlap. Why do we care about a change of use? Because there is a difference between intensity of use. She has a hard time seeing how a scheduled function would not have a more intense impact than something where people trickle in.
- Mark Wallace said that in the balance proposal they agreed to use busses. That would be the only logical way to do it. Farm Neck puts a tent for the whole summer and it is not a DRI. Oak Bluffs only has 11-acres of business zoned land. There is no more land to develop commercially. It would behoove us to arrange busses to deliver people. But it isn't always going to be high intensity use up there. It might be John Alaimo playing Jazz upstairs in the off season or it might be people using it for yoga.
- Fred Hancock noted that even if we said the DRI has lapsed therefore it seems that the current proposal has to be referred to the MVC as a DRI under 3.2 on the DRI Checklist.
- Linda Sibley said that if you look at what happened at balance they were referred to us. We looked at their offers and we said okay with these we don't have to see it. But there was a piece of the process that formalized their commitments.
- Mark Wallace guessed that then means the question is would he be able to live up to those same commitments made by balance. They would now apply to the whole building. He has people who would like to use the building.
- Linda Sibley said that's good but it's just a statement in this room. If the project were to come to the Commission then statements like that become formally part of the project.
- Christina Brown said that when balance came they wanted a 90-seat restaurant downstairs and also a 150-seat function hall in the off season and in the same space downstairs.
- Mark Wallace said that's correct. He talked to Nectar's and they were thinking of coming downtown. They have 180 parking spaces out at the airport. The revenue for Oak Bluffs Harbor is ten times more than Nectar's. He would understand if they were going to put this onto State Road why it would be a DRI. He just wants to know at what point in time the property lost its right to be a 6,000 sf function hall.

- Fred Hancock said that it's different when it's a bar and a function space. When you have a function hall it's not just people in the neighborhood walking over there for a bit, it's hundreds of people coming from all over at the same time.
- Christina Brown said that the conundrum is that Oak Bluffs has a specific parking schedule. It seems as if the town said that we don't want a lot of paved parking. To say that it will require more parking goes against the by-law.
- Fred Hancock noted that the tabernacle is the only place that would have that kind of event. When there is an event in the Ocean Park they need police details. The town accepts the tabernacle and the bandstand as an existing place of assembly. Throwing another venue into the mix makes a big difference in the town. If you drive downtown at night in the summertime, you know what that is like.
- Mark Wallace said that this piece of real estate has been around a long time. The only thing that held it back from more intense development was the sewer. That being said he would be willing to do the same things that balance restaurant said they were going to do.
- Linda Sibley felt that, as the process maven, there is only one way you can make those offers to the MVC and that is if you go through the DRI process. The only way to deal with issues is with a referral. You could then make offers and we could issue either a non-concurrence or a Decision.
- Chris Murphy said that they bought a building with a pre-existing use and the proposed use is different.
- Mark Wallace said that it is getting very expensive to use the building for nothing. Had he let the liquor license expire he would have had to go through it all again. He sees the building being used for fundraising. There is no doubt that if this was a new building he would be here. But the building already exists. Why isn't Farm Neck coming with their 6000 sf tent every summer? He has people who want to book it for comedy night. He does not have any weddings booked. There is no place on this island where you can have a 300-seat wedding.
- Mark London said that question number one is do they need a development permit. Is an entertainment license a development permit? What is the maximum potential use? You said there could be shows, is it possible there could be three weddings and four concerts in a week?
- Mark Wallace said that the limitations are 500 people by the building code. On opening night we had 600 people come in and out and take a look. They wouldn't think of having a wedding without a bus lined up.
- Mark London said that the third question is how long you remain grandfathered in for an existing use.
- Mark Wallace said that a special permit expires in two years. It is a permitted use.
- Linda Sibley thought that there are some open questions.
- Mark Wallace said his opinion is that his entertainment license should not be a regional impact. Our town has noise bylaws. We have parking. If we were building a new development it would be no question. They bought this building in the worst economy ever. They have used it four times. The only other way to use it would be to make it into condominiums.
- Linda Sibley said that we have some questions we need asked of our counsel. She wants to look at what we did with balance and the original DRI of Dreamland. We will get back to you in the meantime.
- Chris Murphy said that this enough of a change of use for him for this project to be sent here.

BEER and WINE:

- Mark London said that Doug Sederholm had suggested to the Black Dog that they come to the MVC to check to see if when they want to add a beer and wine license that means that they have to be sent to the MVC as a modification to a DRI.
- Chris Murphy said he thinks we should interpret the vote of the Town of Tisbury as a done deal and we should let them deal with it.
- Mark London said we looked at traffic and there does not seem to be any precedent for calling it a separate use.
- Linda Sibley said that she doesn't agree with the logic. That would mean that if the town voted to tell the Commission to ignore number five on the Checklist they could ignore it. So she thinks that it is flawed logic. There should not be a definite increase in activity. They might make more money.
- Fred Hancock quipped that they might live up to the name of the Black Dog Tavern.
- Ned Orleans said he is trying to imagine the reaction of the Town if we were to say that all of those licenses need to be sent here as a DRI.
- **Christina Brown made a Motion that the LUPC should find by consensus that adding beer and wine with meals in existing restaurants is neither a change of use nor a change of intensity of use. Ned Orleans seconded the Motion which was voted unanimously.**
- Linda Sibley said she is somewhat concerned with what appears to be an explosion of takeout restaurants. She pointed out that the Checklist does say that adding takeout comes here. Parking a takeout truck in front of your restaurant or adding a takeout window should also come here. She would like to suggest that we might want to send out a general letter saying that we are concerned that some of these are happening in a very busy traffic area.
- Chris Murphy asked if the Square Rigger is adding a takeout window to make their business work smoother should that come here.
- Linda Sibley said that she has seen situations in towns where they say they wish they could send a project as if they do not know that we have the discretionary referral.
- Mark London said we could put the two together in a letter that we have a discretionary and oh by the way there seem to be a lot of takeouts.

2. Little House Café (C.R. 1 – 2010)

- Mark London said we had a staff applicant and two young couples bought the old antiques store. They have spent many months going through town boards and asked several times whether it had to come and Ken Barwick told them no. So they went to the ZBA to ask for fewer parking spaces and they sent it. Now they already have the septic going in and they've mortgaged their houses and they have SBA loans. There are in the Tashmoo watershed which has strict limits. If they had known at the time they would have put in a composting toilet. The key issues are wastewater and traffic. We talked to them this afternoon. They will be at LUPC next Monday. They are going for a concurrence review next Thursday. One option is if we have identified the issues and they can address them then we can do a non concurrence with a specific plan and offers. The other is that we would have a public hearing on July 15. Depending on whether the issues are resolved or not we might have a Decision that night and even a written decision. We need a site visit.
- Chris Murphy said that the water is the big issue. His first impression would be to say they should cut back to 24 people. They can't expect us to ignore the nitrogen loading issue.