



BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453,  
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

## **Martha's Vineyard Commission Land Use Planning Committee**

### **Minutes of the Meeting of March 19, 2012**

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 p.m.

*MVC Commissioners Present: Doug Sederholm (Chair); Chris Murphy; Kathy Newman; Pete Cabana; Ned Orleans, Christina Brown; Camille Rose; and Brian Smith.*

*MVC Staff Present: Paul Foley; Christine Flynn*

#### Documents referred to during the meeting

- DRI Checklist Review – Commercial Projects Possible Revisions

#### **1. DRI Checklist Review – Commercial Projects**

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The purpose of MVC DRI review is to ensure respect of regional goals such as:

- Keeping commercial development in commercial areas,
- Preserving the rural character of most of the Island,
- Minimizing regional traffic impacts,
- Preserving water quality in ponds.
- Harmonizing with the area and other aesthetic issues.
- Limiting noise.

The Island Plan is a good starting point for identifying these goals.

It has been suggested that the threshold for review of commercial projects might be modified to reduce or eliminate mandatory review of some or all commercial projects in commercial areas.

Commissioners had the following comments.

- Though town planning boards are more able to deal with these issues than when the MVC was first created, it is not clear that the towns currently have the tools, procedures, or legal authority to deal effectively with them in their project review.
- Unlike the MVC, town boards do not have the professional staff to assist with this review.
- The Commission is an Island-wide entity with a responsibility to ensure that regional impacts are dealt with; it should not simply turn this responsibility over to the towns without an assurance that the regional issues will actually be dealt with. If the MVC simply raises, or eliminates, the threshold for referral of commercial projects, only reviewing projects that a town board chooses to send, the MVC would have no way to grab it if for some reason the town board is not dealing adequately with a project.

It was suggested that the MVC might pull back from review of certain projects in conjunction with a demonstration by towns that they have the tools do deal with the regional impacts.

All towns have zoning that prohibits commercial development in most areas with some exceptions. We should make sure that we deal effectively with these exceptions.

Traffic impact is a regional issue that towns are not necessarily able to deal with effectively. The MVC deals with traffic issues with measures such as the following.

- Looking at site design to improve vehicular access and parking.
- Seeking off-site parking, such as for employees.
- Requiring parking if deemed appropriate, even if not required in town zoning.
- Seeking mitigation to offset unavoidable traffic impact. The MVC doesn't do what the Cape Cod Commission has done such as requiring an extra turning lane or installation of a traffic light, since we don't want these on the Vineyard. However, there have been cases where applicants have bought transit passes or offered other mitigation to offset traffic impacts.
- Limiting high traffic-generating uses in critical areas.
- Denying very high-traffic-generating uses or other problematic proposals in critical areas.

An issue we often deal with is whether a new project fits into its area. It would be useful to look at the typical commercial floor areas of buildings on various commercial streets and see how this compares to the thresholds. There could be different thresholds in different areas based on the current typical areas.

It would be interesting to know what percentage of commercial applications come to the MVC. We should ask ourselves whether there are projects that the MVC reviewed in recent years that didn't really need MVC review. If so, is it because the projects happened to be well designed or were they so minor that even a poorly designed project would not have been problematic?

Should the MVC have a weighted list, such as LEED, where the accumulation of a number of different potential impacts above a threshold would qualify as a regional impact? Or should each impact be enough to trigger MVC review on its own, such as exceeding the nitrogen load limit for the watershed?

Presently, once a project is deemed to be a DRI, the MVC reviews all aspects of the proposal. Could we limit review to just one or two aspects? Could this be an option for towns making discretionary referrals?

We could use developers desire to avoid having to come to the MVC as an incentive to meet certain standards and to design better projects.

With respect to having a building inspector make a determination as to whether or not a project should be referred as a DRI, it is easier to have a simple threshold such as square footage. Although there is some logic in using other criteria such as nitrogen loading or trip generation, these would be more complicated for a building inspector to apply. It would probably make more sense to have towns refer projects "with concurrence" and then have the Commission use various criteria in deciding whether or not to concur. It is more difficult to use qualitative factors such as design and character in deciding whether a project should be reviewed as a DRI, though these can be equally important.

We could deal with the possible change of thresholds in two ways.

- 1) Change the DRI Checklist now, raising the threshold for mandatory review of commercial projects in commercial areas (to, say, 3000 or 4000 square feet) with certain conditions. Projects between 2000 square feet and the new threshold would become "mandatory

referral with concurrence” meaning that they wouldn’t automatically get full DRI review. The MVC could use as criteria for not concurring:

- The project meets the nitrogen-loading limit for the watershed,
- The project meets the MVC’s energy policy,
- Along critical road areas, the project is not a high trip-generating use and does not result in more than a given number of vehicular trips,
- The project is not substantially larger than other nearby uses or buildings,
- The town has the authority and a plan for reviewing other regional issues,
- There is a requirement for a public hearing at the town level,
- There are no other compelling potential regional impacts.

In the case of the Commission not concurring with a referral, we have to make sure that we can deal adequately with enforcement, such as in the case of an applicant changing the proposal after the MVC has not concurred.

- 2) Allow the towns to petition for a change in the thresholds for commercial projects in commercial areas in their town (to, say, 3000 or 4000 square feet) on the basis of their demonstrating that they have the legal and planning tools to review these projects and to deal with all the regional issues.

### **Next Steps**

- LUPC will continue the discussion of commercial projects on April 9.
- We will invite representatives of planning boards to participate in this discussion.
- Staff should prepare a summary matrix showing the current key regulations in various commercial areas including when special permits are needed.
- Staff should look at the typical commercial floor areas of buildings on various commercial streets.

Adjourned 7:00 p.m.

## REVIEW OF THE MVC'S DRI CHECKLIST

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### **Commercial Buildings and Areas Possible Options for Consideration**

*Note: On Monday, March 19, 2012, the MVC Land Use Planning Committee will discuss possible changes to the DRI Checklist with respect to commercial buildings or areas. Note that this is an opportunity for Commissioners to discuss these issues among themselves. A public meeting was held about this in 2011 to elicit public comment and there will be further opportunities for public comment as the process advances.*

The following are some measures that the MVC could take with respect to how we handle commercial projects.

1. Reduce the number of projects in Commercial Areas requiring DRI review (raise thresholds)
2. Increase the number of projects in Rural Areas requiring DRI review (lower thresholds)
3. Clarify the Thresholds for Restaurants
4. Require DRI Review of Chain Stores and Restaurants

#### **1. Raise Thresholds in Commercial Areas**

Presently, the DRI Checklist requires mandatory referral to the MVC and mandatory DRI review for the following commercial, industrial, or private educational facilities: *“New construction totaling 2,000 square feet or more of commercial floor area in one or more buildings”*.

In addition, it requires mandatory referral of the following, with DRI review only taking place with the concurrence of the MVC: *“New construction of addition(s) or auxiliary building(s) totaling 1,000 square feet or more of floor area, such square footage resulting in a total square footage of 2,000 feet or more.”*

It has been suggested that we raise these thresholds in town centers and commercial areas, as these are the places the community wishes to promote commercial development. The Oak Bluffs and Edgartown Planning Boards suggested that there be no mandatory DRI referral of commercial projects of any size.

We could handle this in two ways.

- Raise the threshold for referral of new construction to the MVC to a higher number, say 3000 or 4000 s.f., provided the project is located in a business area, the project is subject to an effective special permit process by the town, and/or there is a master plan for the area approved by the MVC.
- Leave the threshold for at 2000 s.f., but make DRI review for projects between 2000 and a higher limit (say 3000 or 4000 s.f.) only with the concurrence of the MVC, and then use the three criteria mentioned in the last bullet as the main factors to determine whether or not to concur.

We could decide to raise these thresholds only if one or both of the following measures have been taken to ensure that potential regional issues – such as traffic, parking, affordable housing, area character, and water quality – can be dealt with by the town:

- Making this change only for projects that are subject to a special permit process at the town level, provided the reviewing board has the legal authority and capacity to deal with potential regional impacts;

- Making this change only for those areas where the town in question has adopted a master plan and/or standards for that area, approved by the MVC, that deal with regional impacts.

## **2. Lower Thresholds in Rural Areas**

At the same time, we could ensure greater review of commercial projects in rural areas where commercial development is generally not encouraged, by reducing the trigger to, say, 1000 square feet for new construction and 500 square feet for additions in Rural Areas identified in the Island Plan (see enclosed map) or in some other defined areas.

## **3. Clarify the Threshold for Restaurants**

Presently, establishment of a new restaurant with up to 49 seats in a B1 zone is not subject to DRI review. However, an application to convert an existing shop into a, say, 10-seat must be referred to the Commission. There seems to be a dichotomy between these two standards as to what constitutes a potential regional impact.

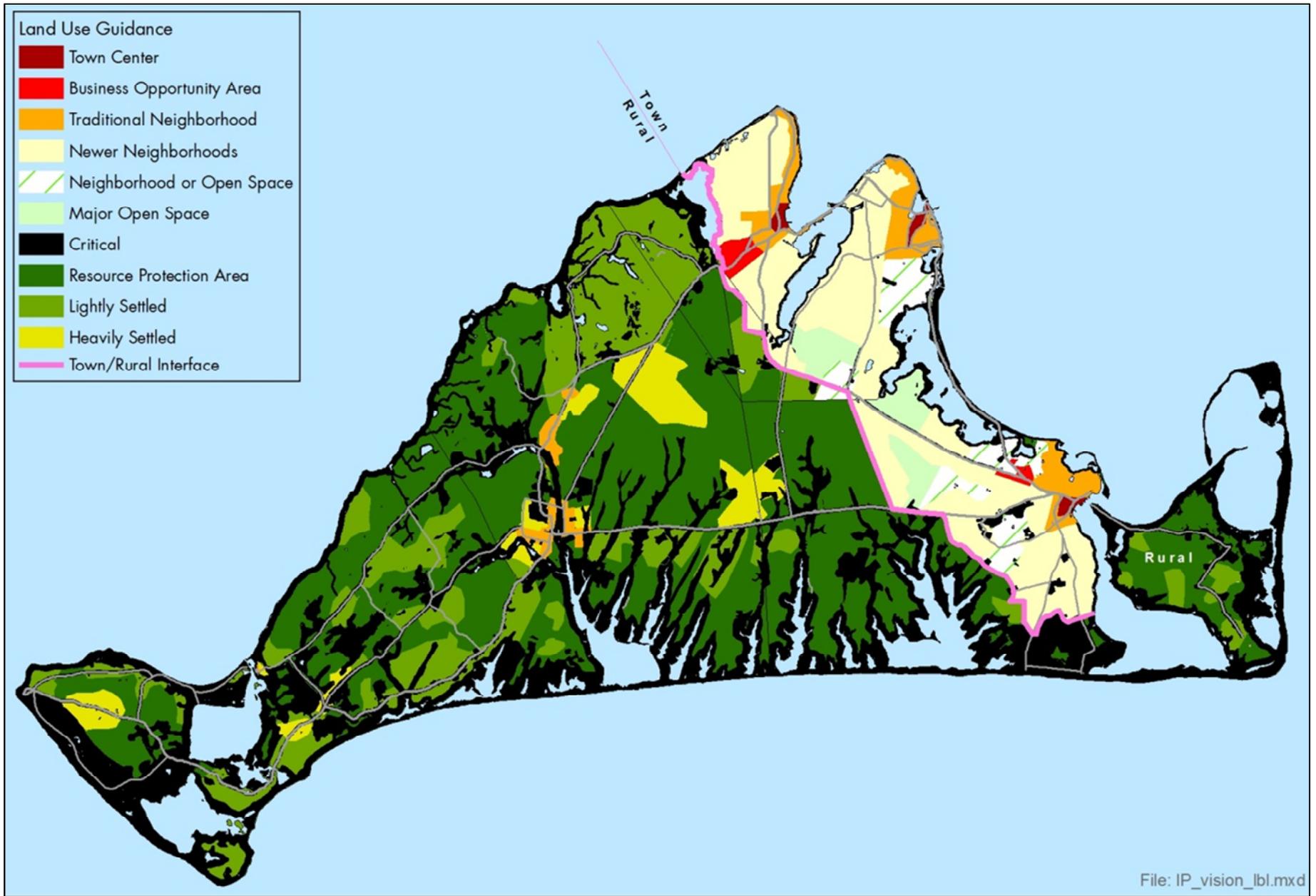
## **4. Require DRI Review of Chain Stores and Restaurants**

The Island Plan outlines the concern about chain stores and restaurants as follows.

*Presently, the vast majority of retail, food, and other businesses on the Island are small, locally owned enterprises. This increases the proportion of residents' and visitors' spending that stays on the Island, and contributes to the sense that the Vineyard is different from mainland America. Many resort areas have seen a rapid change as chain stores and restaurants owned by corporate entities expand into their communities. If we conclude that this is a threat here, we could restrict "formula" businesses in historic town centers (or perhaps even the whole Island), as some nearby off-Island towns have done, or suggest to the MVC that it add this kind of commercial activity to the Development of Regional Impact Checklist.*

Some towns limit the size or number of chain stores or restaurants, others prohibit them in certain areas such as historic town centers. In the past few years, the Massachusetts Attorney General has confirmed the authority of towns acting under the Zoning Act (40A) to regulate Formula Business Establishments in Chatham, Dennis, and Nantucket. Chatham defined the purpose as: *"to help protect Chatham from the intrusions of chain stores and franchises . . . and the potential negative impact they would have on the Town's special character, local business-based economy, economic vitality, and historical relevance and experience."* These businesses are usually defined as meeting a number of criteria commonly associated with formula businesses. For example, Chatham defines a Formula Business Establishment as *"a business which does or is required by contractual or other arrangement or as a franchise to maintain two (2) or more of the following items: standardized (Formula) array of services and/or merchandise including menu, trademark, logo, service mark, symbol, décor, architecture, façade, layout, uniforms, color scheme, or similar standardized features and which are utilized by ten (10) or more other businesses worldwide regardless of ownership or location."*

The MVC could add a similar criterion to the Checklist, either for mandatory review or as a concurrence item, and either for the whole Island or in specific areas such as historic town centers. Note that this merely requires that proposals for chain stores or restaurants be reviewed by the Commission and does not presume the outcome of this review.



Island Plan – identification of Town and Rural areas