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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of January 13, 2014

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

Commissioners Present: Linda Sibley; Trip Barnes; Joan Malkin; and Christina Brown.

MVC Staff Present: Paul Foley; Mark London.

The LUPC was scheduled to review two projects on January 13, 2014. The proposed Mixed-Use (Truck Repair/Office/Apartment) at 20 Cook Road in Tisbury (DRI 646) was put on hold at the Applicant's request.

Documents referred to during the meeting:

- LUPC Agenda of January 13, 2014
- Power Point Slide Show of DRI 616 site, area, and plans.
- DRI 616 Request to Surrender Previous Approval

2. DRI 616 - IHT Rescission Request (Surrender) of AA Car Rental Decision - DRI Review

Present: Philippe Jordi (Executive Director of Island Housing Trust)

Applicant: Philippe Jordi (Executive Director of Island Housing Trust)

Proposal: The current owner of 6 Water Street in Vineyard Haven is requesting the MVC to rescind a 2008 DRI Decision that was never built. The 2008 Decision is still technically in effect due to the State Permit Extension Act. The 2008 DRI 616 was a proposal approved with conditions to build a single three-story multi-use structure with a rental car business on the first floor and two apartments upstairs (1,998 sf total floor area). The Island Housing Trust now owns the property and is going to apply for a "friendly" 40B comprehensive permit through the state DHCD and the Tisbury ZBA for a proposed 3,600 square foot 5 unit apartment building with one parking space. They would like the previous DRI Decision rescinded so that they would not have to go through the MVC DRI Modification Review.

Location: 6 Water Street, Tisbury Map 7-F-9 (0.11 acres)

Purpose: To review the request and decide whether or not to make a recommendation to the full Commission to allow the rescission or surrender of DRI 616.

Discussion:

- Linda Sibley said that there are two pieces to consider in reviewing this request. The first is whether the LUPC wants to make a recommendation to the full Commission whether to accept the request to surrender or rescind the DRI approval or not. The second issue is to consider what the process should be since this has never been done before.
- Joan Malkin thought the first order of business should be to know whether or not the Commission has the right to rescind a DRI decision. If we have the right do we need a process.
- Linda Sibley reiterated that we have never done this before. Are we setting a precedent? Do we care?
- Christina Brown said she would like to talk about the issue of why they are requesting to surrender or rescind the Decision. Are they trying to avoid Modification Review?

- Trip Barnes said he thought we should look at the proposal Island Housing Trust (IHT) is proposing at 6 Water Street. It would not matter except for the location it is in. We have spent the last year looking at a proposal right next door, this is the gateway to the island, and we need to consider that the area is both under scrutiny and important to the whole island.
- Linda Sibley said the final decision is for the whole Commission. We need to discuss the various issues and options and make a recommendation to the full Commission so that they understand the whole picture before entering into discussion.
- Christina Brown said it is true that the rescinding of the Decision would clear the air and put the ball in the Town's court as to whether they want the IHT proposal for 6 Water Street to be reviewed by the MVC as a DRI. Would we accept a Concurrence Review on that proposal if it were sent as an Increase in Intensity of Use? She thinks so. Forget the trigger, should we have a public hearing on the proposal, she thinks yes.
- Joan Malkin asked when the current DRI 616 approval will expire.
- Paul Foley said that the DRI 616 Decision is valid until August 2014 due to the State Permit Extension Act.
- Joan Malkin thought that the IHT proposal is not in front of us now. The question is first does a DRI lapse when it expires. The answer is yes. This would have lapsed years ago if not for the State Permit Extension Act. Does the proposal they are going to make at 6 Water Street trigger the DRI checklist?
- Paul Foley explained that the proposal for 6 Water Street, five affordable housing units on 0.11 acres does not necessarily trigger the DRI Checklist. However, the Town could choose to send the proposal as an Increase in Intensity of Use which would be a Concurrence Review. The Commission generally leaves the interpretation of an Increase in Intensity of Use to the discretion of the local referring board, although there is a definition in the DRI Checklist.
- Mark London said he had talked to MVC Counsel and they again suggested that the best way to rescind a Decision would be through the same public hearing process as approving a DRI. Some have expressed concern that this might set a precedent for the Hart (DRI 549) Decision to be rescinded. Well that is a different situation which would likely be clarified through a public hearing process.
- Trip Barnes thought this request should be put on hold until we know what is happening with Stop & Shop. Whichever way that project comes down could have a big impact on what happens at this property.
- Christina Brown asked Philippe Jordi why not just wait until August 2014 when the DRI 616 Decision will expire.
- Philippe Jordi said that Island Housing Trust had a mission to fulfill. They have had this property for one and a half years The Town has told them they will start taxing them if they do not have movement on the property before two years are up. IHT has a plan in place and are ready to proceed on that plan.
- Linda Sibley commented that the MVC could adopt a process to deal with rescinding decision quicker than waiting until August for this one to expire.
- Joan Malkin asked if we (the MVC) have the inherent ability to rescind a decision. If we do and it is treated as a rescission (as opposed to a surrender), then we shouldn't waste time now (before dealing with this applicant) adopting a process.
- Linda Sibley suggested there are two problems with that. The first is that we could get sued if the process we do adopt is radically different than what we use for this case. The second, addressing Trip Barnes point, the Stop & Shop (DRI 89-M3) is right next door. If we make this rescission/surrender super easy then it could be politically controversial.
- Joan Malkin said she feels someone should be able to surrender their DRI if they have no plans to carry out the proposal which triggered the DRI. It is not relevant who the neighbors are.

- Linda Sibley said that if a charitable organization appears to be treated differently, less stringently, than a corporation next door then we could get into trouble.
- Trip Barnes noted that the original DRI review was for a three-story mixed use building with three units. The current proposal is for a bigger building with five units. He added that he does not think that five corners would be an ideal place for five families to live.
- Linda Sibley said she wanted to keep separate the question of rescinding the DRI Decision and what the IHT proposal will be. She then noted that in 2010 the MVC decided to modify and largely abandon the old "Once a DRI always a DRI" standard that used to keep DRI's, whether approved, denied, or expired, always on the books as a DRI. Now if you are denied or the approval expires without substantial work being done the property reverts to non-DRI status. She explained that the "Once a DRI always a DRI" came about because someone got denied for a DRI proposal and then proceeded to essentially do the same project incrementally through time and subdivision. So the Commission adopted "Once a DRI always a DRI" to prevent that from happening again.
- Mark London suggested that it could be problematic if the MVC were to allow this DRI Decision to go away without a public hearing review now and in 6 months adopted a more stringent process. So it would make sense to scrutinize more fully now so that the eventual process is not more stringent than the process used now.
- Christina Brown pointed out that there is a difference between Rescission and Surrender. "Rescission" is usually a hostile act by a town board taking an approval away from someone for cause. Whereas "Surrender" is usually by an applicant no longer wanting to do the originally approved proposal. We need to think about adopting a good process for allowing an Applicant to surrender their approval.
- The LUPC agreed that this is not a case of rescission but rather of the applicant wishing to surrender their prior approval.
- Joan Malkin agreed. The two year sunset clause on DRI Approvals is intended to give the applicant enough time to get the project started.
- Linda Sibley said that the LUPC should discuss the proposal and process thoroughly to clarify the issue for the full MVC. She reiterated that the only reason the DRI 616 Decision is still valid is the State Permit Extension Act was put in place and then renewed a second time. If the MVC is inclined to allow the Applicant to surrender the DRI 616 Decision they could preface the document with "Whereas this approval would have expired in August 2010, the State Permit Extension Act has..."
- Trip Barnes reiterated that he thinks this should be tabled until after the MVC decides on the Stop & Shop.
- Linda Sibley asked if what they propose to do with the property does not trigger the DRI Checklist why do we need to see it.
- Joan Malkin said that if someone has not done any work on a DRI then they should be able to surrender it. But we need to formalize the process specifically to be able to formally ask the Applicant and the neighbors if any work has in fact taken place.
- Philippe Jordi asked if he could go to the State, who issued the State Permit Extension Act, and ask that the Permit Extension Act not apply to them.
- Linda Sibley said no because it is a law.
- Joan Malkin suggested that this request not be treated as a request to rescind but a request to surrender and that the LUPC should recommend to the full Commission that the request to surrender DRI 616 should go to a public hearing review with the specific point to be discovered whether or not any action has been taken on the DRI Approval.
- Mark London asked what if they have made some minor change.

- Joan Malkin said that when we formulate the formal written policy we can clarify the criteria. She agreed we should be conservative now and hold a public hearing. While we do not have an express policy now detailing the process and criteria for surrendering a DRI approval the public hearing process is the fairest and most conservative way to ensure that all relevant issues and concerns have been reviewed and considered in an open forum. We will examine a more detailed policy and process for future cases in which an owner of a property with a valid DRI approval on which no work has commenced can apply to surrender that DRI approval.
- Mark London noted that we might end up with a process where a public hearing is not necessary but for a case without a process we should have a public hearing.
- Christina Brown noted that this is the first time that someone has asked to surrender a previous DRI in order to avoid a Modification Review. This is really only possible since the "Once a DRI always a DRI" rule was changed. If we allow them to surrender the DRI without a public hearing then the IHT proposal may not ever get a public hearing.
- Trip Barnes said that if we do let them surrender the DRI the Planning Board should send the IHT proposal to the MVC as an Increase in Intensity of Use given everything else that is going on around that property and neighborhood. This is the gateway to the town. These properties are married to each other. He is all for affordable housing but this whole area needs to be looked at.
- Christina Brown agreed that she thinks the public should have a chance to hear about the IHT proposal and express their opinions.
- Joan Malkin said that we should allow them to surrender the DRI since it appears that they have not begun any work on it and it should have expired a few years ago. That being the case then the IHT proposal is not in front of us unless the Town decides to send it.
- Philippe Jordi said that there will be a public hearing before the ZBA for the 40B Comprehensive Permit.
- Linda Sibley noted that the Town does not have the powers the MVC has to condition and even deny a 40 B.
- Philippe Jordi said that the town is putting together a by-law that would allow this type of project without having to do it through a 40B. He added that the Housing Trust is excessively scrutinized.
- Linda Sibley summarized that the key issues seem to be appearance and traffic.
- Trip Barnes said that you can't look at this IHT proposal without thinking about what's going on in the neighborhood.
- ***Joan Malkin made a Motion that the LUPC should recommend to the full Commission that the request to surrender DRI 616 should go to a public hearing review with the specific point to be discovered being whether or not any action has been taken on the DRI 616 Approval or the property has in any other way been altered since the DRI approval. Christina Brown seconded the Motion which passed unanimously.***

The meeting was adjourned at 6:50 pm.