Minutes of the Commission Meeting
Held on May 10, 2018
In the Stone Building
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners:  (P= Present; A= Appointed; E= Elected)
P Gail Barmakian (A-Oak Bluffs)  P Michael Kim (A-Governor; non-voting)
P Trip Barnes (E-Tisbury)  P Joan Malkin (A-Chilmark)
P Leon Brathwaite (A-County)  P Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)  P Ben Robinson (A-Tisbury)
- Peter Connell (A-Governor; non-voting)  P Doug Sederholm (E-West Tisbury)
P Robert Doyle (E-Chilmark)  P Linda Sibley (E-West Tisbury)
P Josh Goldstein (E-Tisbury)  P Ernie Thomas (A-West Tisbury)
P Fred Hancock (E-Oak Bluffs)  P Richard Toole (E-Oak Bluffs)
P James Joyce (A-Edgartown)  P James Vercruysse (E-Aquinnah)

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner).

Chairman James Vercruysse called the meeting to order at 7:00 p.m.

1. DOCKSIDE INN-OAK BLUFFS DRI 271-M DELIBERATION AND DECISION


1.1 Staff Report

Paul Foley presented the following:
- The packet of information contains the offers and possible conditions, the post LUPC notes, as well as the plans.
- The MVC has not received any new correspondence.
- Staff spoke with the applicants about possible conditions, and they have submitted them along with the site plan.
- The LUPC recommended unanimously to approve the modification with the offers and conditions as clarified.

1.2 Review of Draft Offers and Possible Conditions

James Vercruysse, Chairman, lead the discussion.

1 Housing

Christina Brown asked if there could be some statement in the offers on how the applicant will let the MVC know that the affordable housing will be monitored. Linda Sibley said that is noted in section 1.2. “As offered by the applicant.” She suggested that the offer should say the owner’s responsibility and not
applicant’s. The offer goes with the property, so if the current owner sells, he is no longer the owner. 
Language such as owner’s responsibility would be clearer.

**Gail Barmakian** suggested adding the word inspection and certification to section 1.2 to make it more enforceable.

**Joan Malkin** also felt the language should be changed from applicant to owner.

**Linda Sibley** said the language of the offers has always been as offered by the applicant, but it should also say the owner in this instance.

**Joan Malkin** said for section 1.1, the provision for off-site housing in lieu of rooms for employees, she believed the MVC should quantify what the off-site housing is. Because the number of employees has increased by at least the four van operators, how many rooms off-site would be adequate for workforce housing? **Christine Flynn** said the four rooms are adequate to satisfy the affordable housing.

**Joan Malkin** said she felt it should say in section 1.1 to provide housing provisions for premise employees, and to specify that it is for four employees.

**Doug Sederholm** suggested language “to provide adequate housing for four employees.”

**Linda Sibley** said in lieu of the original employee rooms, this is a replacement for a condition that was imposed before. **Paul Foley** said it wasn’t actually a condition, but it was included in the description. There were no conditions on the original DRI. **Joan Malkin** said it would have been binding since it was in their proposal. She would like to see it be clear as four rooms off premises.

**Transportation and Parking**

**Joan Malkin** asked for section 2.1, should it be the owner of the property rather than operator of the hotel?

**Linda Sibley** said it should be the operator because the owner could be in Timbuktu, and suggested changing the language from operator to hotel.

**Gail Barmakian** suggested language “the hotel management shall” for section 2.2. **Doug Sederholm** said hotel is fine. If it doesn’t happen, they will be in violation.

There was a discussion about section 2.4, “The applicant shall apply to the Oak Bluffs Planning Board to determine the amount of parking and/or mitigation required for this use.”

- **Joan Malkin** questioned what “this use” means in section 2.4. Is it for use as a hotel and tour operator site?
- **Josh Goldstein** said the license needs to be renewed every year.
- **Leon Brathwaite** asked why. **James Vercruysse** said it is a licensing issue.
- **Paul Foley** said if the parking requirement hasn’t been met, the Planning Board can grant a waiver.
- **Linda Sibley** proposed the language “approved uses of the property” to replace “for this use.”
- **Christina Brown** suggested the same language from 3.1 “to operate a hotel and tour business.”

**3 Tour Operation**

**James Vercruysse** asked if the parking plan was part of the new landscape plan. **Paul Foley** said the parking plan will be submitted as a narrative to the LUPC on how the vans will come and go.

**Linda Sibley** said the landscape plan is not part of the tour operation.

**Paul Foley** said the lawyers for the applicant offered to remove landscaping if the MVC wanted more parking.
Leon Brathwaite said in 3.2, the applicant is being asked to come back to the MVC, but in section 2.4 they have to go to the Town, and asked why. Doug Sederholm said section 2.4 is only for parking and can be handled by the Town. Paul Foley explained that section 3.2 is about the tour bus operation and should come back to the MVC.

Linda Sibley asked if it should be a van operation or logistics plan, because it is not a parking plan.

Christina Brown said boiler plate language should be added to the second page stating all conditions of the approved DRI are included.

Linda Sibley moved and it was duly seconded to approve the modifications as presented and clarified.

1.3 Benefits and Detriments

Appropriate/Essential in View of the Alternatives: The Commissioners found it to be neutral.

Wastewater and Groundwater: The project is hooked into the sewer. The Commissioners found it to be neutral.

Open Space and Natural Habitat: The Commissioners found it to not be applicable.

Night Lighting and Noise: There is no change, and the project is in the business district. The Commissioners found it to be neutral.

Adversely Affect Other Persons and Property, Traffic and Transportation: More traffic is being added with the tour buses/vans. Testimony was received of the advantages of the tour operation bringing business to the Town. The applicant encourages guests not to bring their vehicles, and the mitigation is helpful, but it is not a benefit. The Commissioners found it to be a detriment.

Scenic Values: There is no change. The Commissioners found it to be neutral.

Character and Identity: There is no change. The Commissioners found it to be neutral.

Impact on Abutters: There is no change, but there was testimony from people on the road. It is a narrow and heavily traveled road by pedestrians, bikes and businesses for three months of the year. The Commissioners found it to be a slight detriment.

Low and Moderate Income Housing: There is no change. The affordable housing is moving off-site. The Commissioners found it to be neutral.

Impact on Services and Burden on Taxpayers: It is a revenue generator for the Town, and the tour service adds revenue as well. The same number of police is needed to deal with the grid lock. There really is no change with impact on services. The Commissioners found it to be a benefit.

Use Efficiently or Unduly Burden Other Public Facilities: There is no change. The Commissioners found it to be neutral.

Consistency with/and Ability to Achieve Town, Regional, State Plans and Objectives: It is very consistent with the Island Plan, conforms to zoning, and is development in the downtown area. The Commissioners found it to have a slight benefit.

Conforms to Zoning: The Commissioners found it to be neutral.

Conforms to DCPC Regulations: The Commissioners found it to not be applicable.

2. CHAPPIE TEMPORARY TOWER-EDGARTOWN DRI 662 EXTENSION REQUEST


For the Applicant: Jon Elder (Attorney)

Leon Brathwaite moved and it was duly seconded to approve the extension.

2.1 Staff Report

Paul Foley presented the following:

- On the Town level, one of the Edgartown Planning Board members unfortunately passed away, and the alternate voted in his place. The vote was 4-1. However, the alternate was not eligible to vote because he was not present at the meetings prior. Therefore, the applicant had to withdraw without prejudice because the vote was 3-1.
- The Planning Board did not have the proper vote, so the permanent tower has to go through the Town process again.
- The MVC told them if the project is exactly the same, it does not have to come to the MVC.
- The request is to allow AT&T to continue to operate the 104 foot concealed antenna monopole and wireless communication facility on the Property from May 2, 2018 (the current expiration of the Decision) until the later of (a) May 2, 2019 or (b) the date that is six months after the entry of the final judgement of final settlement of any and all appeals of decisions by the Planning Board and the MVC concerning AT&T’s application for permits and approvals for a permanent wireless communications tower and facility at the Property.

2.2 Commissioners’ Discussion

Joan Malkin said there was a temporary tower, and the applicant is seeking to extend the longevity of that decision. Will the applicant also ask to extend the MVC decision of the permanent tower? Jon Elder said no, AT&T is asking to extend the longevity of the existing tower, and are not asking to extend the MVC decision of the permanent tower. The primary purpose of this request is the later of a year or six months after the judgement or any appeal of the Commission or the Planning Board decisions. The request is to accommodate the pending litigation and what might be forthcoming for litigation for the permanent tower. On May 1, 2018 the Planning Board approved the same modification for the temporary facility.

Joan Malkin asked when the MVC Decision expires. Doug Sederholm said it doesn’t matter because it is on appeal.

Linda Sibley asked if there would be a seamless transition between the temporary tower and the permanent tower. Jon Elder said he would hesitate to make a representation, because he is not a technical expert. Construction is anticipated to take a month.


3. CARROLL’S/UPS EXPANSION-TISBURY DRI 532-M3 MODIFICATION REVIEW

For the Applicant: Mark Nicotera,

3.1 Staff Report

Paul Foley presented the following:
- The project location is 475 Edgartown Road and Carroll’s Way, Vineyard Haven, Map 19 Lot 20.
- The proposal is to add an additional 58’-6” modular sorting car that would be able to accommodate another 12 truck bays to the existing package sorting operation.
- There are currently 14 bays for UPS trucks.
- The site plan was reviewed.
- As well as the DRI review, the project will need a public hearing before the ZBA for a modification to a Special Permit because the operation is a pre-existing non-conforming use. The Planning Board will review the additional parking, and the Building Inspector will approve the structure.
- The applicant expects 18% growth over the next three years.
- The front of the property is in the Island Roads District.
- The property is in violation of DRI 532 Condition A.1.a.4 (No trailers within 200’ of Edgartown Vineyard Haven Road), so the applicant has to ask for a modification.
- The proposal includes fencing and landscaping as required.
- The existing sorting car would remain in its existing location. The existing office car would move northwest, and the proposed sorting car would take its location.
- In order to move the office car, a 10 foot retaining wall would need to be built into the hill on the northwest side of the property. The proposed location of the wall is two feet from the property line. The LUPC requested that the site be staked, and to mark where the roof of the office car would be, as well as the top of the retaining wall.
- The site plan was reviewed, and the current traffic flow was shown on the site plan.
- UPS is growing and needs more space.
- There are constraints with regards to space for the trucks to turn around.
- At the LUPC meeting, there were discussions with the applicant about returning with a Master Plan, due to the amount continued growth and the need for more efficient planning.

James Vercreyse asked for clarification of the term “car,” and asked if they were mobile. Paul Foley said they could be mobile, but are on a foundation and hardwired. He showed a photo of the cars, and said they look like trailers with doors. In order to move the sorting car, it would require UPS to shut down operations for a day or two, which is why the proposal does not include any changes to the location of the existing sorting car.

- Photos of the site were reviewed.
- There is an abutting residential area that can be seen through the woods from the site.
- The staked area marked for the proposal was shown.
- Per Ken Barwick (Tisbury Building Inspector), any retaining wall over three feet is considered a structure and needs to meet the setback requirements. The side setbacks are 15 feet. The current location for the proposed retaining wall is within two feet of the property line, and will not be approved. Paul spoke with the applicant, who said the plan would be adjusted, but those have not yet been submitted.
- The top of the relocated office car would be below the top of the hill.

3.2 Commissioners’ Discussion

Doug Sedarholm asked why this project was being reviewed by the MVC if part of it is clearly in violation of the Tisbury Zoning bylaw.
Paul Foley said the retaining wall issue only became clear today, and the applicant will explain how it will be modified during their presentation.

Linda Sibley said the purpose of this meeting is to determine if this modification is sufficiently substantial to require a public hearing. Since the proposal needs to be substantially revised, there may not be a decision tonight. The Commission needs to decide if the project has sufficient regional impact, and if it doesn’t, the issue with the bylaw can be handled on the Town level.

Paul Foley said it wasn’t clear from the plan where the retaining wall would be, which is why the LUPC asked for the property to be staked.

Richard Toole said the applicant is in a hurry to get this done. He believes the proposal needs a public hearing, not because of the wall, but because it is a huge increase in the operation in a place that is affected by traffic. He thought the MVC would be doing the applicant a favor to vote that it needs a public hearing, so they would not be going back and forth with the LUPC and the full MVC, which would delay the process even longer.

Richard Toole moved and it was duly seconded that the modification is significant enough requiring a public hearing.

Joan Malkin said the MVC can move forward with a public hearing, provided the applicant has secured plans.

Linda Sibley said the LUPC asked Paul Foley to schedule a public hearing, but the applicants need to have plans ready, or it would be pushed off.

3.3 Applicants’ Presentation

Mark Nicotera presented the following:

- He was representing UPS, and felt the MVC was moving too fast. The applicants would like the opportunity to present before the full Commission why the project doesn’t need to go to a public hearing.
- In speaking with Carroll’s and UPS, UPS was trying to get this done before their busy season.
- UPS and Carroll’s have an existing lease for one year.
- No matter what happens and whatever review is done, the use of that space will continue at the same level it is being used now.
- The proposal adds a sorting car to make UPS’s life easier, and so packages can be delivered on time. No matter how many people use Amazon, those packages will be delivered to the site to be sorted and delivered. This proposal will not have an impact on that.
- The applicants are planning to return to the MVC one year after the sorting car is put in place with a Master Plan for the whole property.
- UPS uses one third of the property. The remaining two thirds are occupied by Carroll’s trucking business and self-storage.
- The goal is to keep UPS moving smoothly.
- No matter what happens now or whatever meetings take place, UPS will continue to bring over however many trucks come with packages to that space for sorting and delivery. Nothing that is currently being reviewed will impact the current density, usage, or trucking over the road. It will continue no matter what.
- The goal of this project is to make UPS’s life a little easier and for them to be able to sort packages faster.
- As applicants, there are two public hearings, one with the ZBA and another with the Planning Board just to put one more 56 foot trailer on the property.
- There are currently over 50 trucks and trailers on site.
• The only reason this project was referred was because the property was previously a DRI. It has nothing to do with the content of the proposal.
• If the MVC were to hold a review, it would consist of one more trailer. The review would not consist of a traffic review. Nothing on the site would change.
  – James Vercruysse said the MVC will be reviewing all of that.
  – Josh Goldstein said the MVC can’t stop commerce.
• Unless the MVC can stop UPS from sending trucks on the boats, the trucks will be coming to that space. The applicants plan to return in one year with a Master Plan. Right now, the applicants are trying to add one sorting car so UPS can function on that site relatively easily. The Master Plan will include options for affordable housing, improved self-storage and possibly re-integrating UPS inside.
• At this point, the same amount of activity would be happening. The applicants just want to make it easier for the people who are bringing the packages.
• Now that it is known exactly where the property line is, (it took two months for that), the applicants can shift the building down. The Town would not permit a structure that does not meet the setbacks.
• The project cannot be seen from anywhere. It is located on the backside of a pit. It can’t be seen from Woodside Village or the houses nearby. It would not have a visual impact.
• The proposal consists of one 56 foot, 12 door sorting car to be used instead of the trailers that are already on the site.

3.4 Commissioner’s Questions

Linda Sibley said she would be comfortable not having a public hearing about this proposal if there was some binding way to be sure that the applicants come back with a Master Plan for the property. She did not know how the MVC makes that binding.

Gail Barmakian said based on the applicant’s presentation, this is a temporary modification, so the MVC could allow the sorting car on a temporary basis for a particular period of time; and if they don’t come back, they are at risk of having it removed. She suggested making the decision temporary for a set period of time, at which time the applicants have to come back.

Fred Hancock said what the applicant is asking for at the moment is for the MVC to approve a modification without a plan. They don’t have a drawing, and he is not at all comfortable with that. He thinks that it is totally inexcusable. The decision to hold a public hearing or not should depend on the new plan. If the applicants want to expedite the process, they could agree to a public hearing now, which would speed it up. Otherwise, he does not think the MVC can make a decision on this until the new plan is submitted. It would irresponsible to do so without a plan.

Leon Brathwaite said he agreed with Gail with respect to the temporary modification, and with Linda about the submission of a plan.

Linda Sibley said she thought the MVC can’t make a decision tonight. The MVC needs to have plans. The MVC does have the ability to approve modifications without a public hearing. One of the reasons the Commissioners could approve this project without a public hearing would be because it is only a temporary approval. She would be comfortable with that, but the plans need to be submitted.

Michael Kim asked the applicant if they were planning to submit a revised plan without a structure. The temporary retaining wall is considered a structure, and a structure would be permanent. Mark Nicotera said the retaining wall would be necessary to move the structure. There are plans for all the things UPS would like to do with the site. UPS does this all over the country, and the buildings are made by USA Modular Nebraska. Right now, the building needs to meet the setbacks. The applicants were not aware
of any issues with the setbacks until 3:00 p.m. today. They are working with UPS to modify the proposal. The final plans are not critical for MVC review because the Town will be reviewing them at the Planning Board and ZBA level, and Mr. Barwick will look at them. All this is, is a 56 foot piece of steel that is a modular building that is going to sit there.

Trip Barnes said if there are wheels underneath the sorting car, it is a trailer. He suggested leaving the wheels on it, registering it, and putting a license plate on it, and it can be placed anywhere. It is done all over the Island, but it would need to be a vehicle.

Bill Veno clarified that it was the applicant’s intent to return in a year’s time because the proposal is not adequate for the future, but what difference would there be in one year? Mark Nicotera said UPS won’t be any less busy unless drones start delivering packages. UPS is trying to utilize this space better and buy some time. It is a huge property, and eventually UPS would like to get rid of the trailers on the upper part. It is a pre-existing non-conforming use, and there is no other place to put this operation on the island; so the property will continue to be used for this. The Master Plan will show how the property would be cleaned up, and include an affordable housing component on the upper lots. Some of the lots are owned by the Carroll family, who have improved their area and have installed solar panels. The whole property will be redesigned into something useful. UPS is an anchor tenant.

Bill Veno asked if Mark Nicotera was representing Carroll’s or UPS. Mark Nicotera said both parties.

Bill Veno asked Paul Foley if he knew if the retaining wall issue had to do with the zoning district. On High Point Lane, the MVC approved a 14 foot retaining wall right on the property line. Paul Foley said this is a residential area, and per Ken Barwick, anything over three feet needs to be done by a structural engineer and abide by the setbacks. There are smaller setbacks for the B2 District, and there were no setbacks for the High Point Lane project.

Mark Nicotera said the applicants are working with Mr. Barwick, and he has been to the property.

James Vercruysse said none of the Town Boards can issue any permits until the MVC acts. Because it is a DRI, we have to act. The MVC is not a permitting authority, but Town Boards can’t grant permits until the MVC takes action.

Mark Nicotera said the MVC could say that this particular modification does not need a full review. Linda Sibley agreed, but a plan needs to be submitted.

Mark Nicotera said the MVC could take a break and in a few minutes and he could modify the plan that is shown on the power point presentation. James Vercruysse said the MVC usually requires 5 to 7 days for staff to review the plans and prepare their analysis. You can’t just draw it up on a napkin now and have it approved.

Mark Nicotera said he thought if the MVC looked at the scope of the project, that this is not a residence, it is a commercial application, and action could be taken tonight. James Vercruysse said the MVC is not simplifying the application in that way.

Linda Sibley said there is a motion and a second on the floor, so nothing can be done unless the motion is voted down. She thought the motion should be voted down because the applicant does not have a plan.

Josh Goldstein asked if he was the only one here whose business relies on UPS and understands that they need to be able to deliver packages in a timely manner. Many Commissioners responded no. James Vercruysse said that is not the issue. Josh Goldstein said they want to add a trailer, and asked what the big deal was. He suggested that the MVC allow them to do it to get through the summer, and ensure that the applicants come back with a Master Plan.
James Vercruyssse said he asked Paul Foley to clarify what the structure would be. The applicants called it a car, but it is not a trailer, it is a structure. It is attached to the ground.

Josh Goldstein said the MVC was beating this 56 foot trailer to death. He suggested the applicants register it and park it there.

Richard Toole withdrew his motion and Christina Brown withdrew her second.

Doug Sederholm suggested that the applicant come back to the MVC in a week with a real plan.

Michael Kim said from what he sees, it is not a trailer. It is a structure. If the applicants don’t build a structure, there is no need for a review.

Joan Malkin said the MVC could schedule the applicant fairly promptly if they came back with a designed drawing and resolved the issue with the Town of Tisbury on what they will or will not allow, which would dictate the applicant’s drawing. Linda Sibley added that the plan should specify that it is temporary.

Mark Nicotera said we put a Building Permit application with the Town of Tisbury in February. They had a chance to talk with us about it and review it and nothing about this came up. We just found out today. We can do a plan but all we are going to do is move the box 10 feet and you will be in the same exact spot as you are now. Joan Malkin suggested that they do it.

Linda Sibley said she thought there was a profound misunderstanding on the part of several people about what the legal requirements are under Chapter 831. Some of the things suggested would be in violation of the enabling legislation, which is not in the best interest of the applicant because it means any cranky person out there could appeal the decision and hold them up in court. If it is done with the proper process, the applicant gets a valid approval.

James Vercruyssse said that was also his point. The MVC is trying to help out the applicant, but there needs to be an approvable plan and something to register and document.

Doug Sederholm suggested the applicant come back to the next MVC meeting. Once the plan is reviewed, a decision can be made to send it to the Town or to a public hearing through the MVC.

Linda Sibley added that there is an LUPC meeting on Monday if the applicant wants to run something by the LUPC.

James Vercruyssse said he thought the MVC should table this discussion until a plan has been submitted and the application can be rescheduled. But, the next meeting needs to be scheduled. It was determined that the next meeting would be May 17, 2017.

Linda Sibley said this is critical and she is willing to come to a meeting even if it is only for this project.

4. NEW BUSINESS


4.1 Scheduling

Paul Foley presented the following:

- The Flat Point Farm proposal will be discussed at the May 24, 2018 MVC meeting.
- The following will be discussed at the next LUPC meeting:
  - Clarion Hotel; to add two rooms by putting a divider in their continental breakfast room.
  - Sweet & Treat will come back with a landscape plan.
The meeting was adjourned at 8:15 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- DRI 271-M Dockside Inn Modification to Existing Draft Offers and Possible Conditions for Consideration Clarified at LUPC
- Martha’s Vineyard Commission Land Use Planning Committee Notes of the Meeting of April 30, 2018
- Madison Griffin Corporation DRI Amendment Proposals April 11, 2018
- Dockside Inn Plans and Elevations
- Letter from Anderson & Kreiger LLP, Dated March 28, 2018 for the Applicant: New Cingular Wireless PCS, LLC (“AT&T”)
- Martha’s Vineyard Commission DRI 532-M3 UPS Expansion at Carroll’s Trucking MVC Staff Report – 2018-05-10
- Martha’s Vineyard Commission Land Use Planning Committee Notes of the Meeting of May 7, 2018
- Applicant Narrative for Carroll’s Trucking/UPS DRI 532-M3 submitted By Trademark Services LLC
- UPS Operations Schedule Martha’s Vineyard
- Site Plan and Proposed UPS Expansion Plan

Chairman

Date

Clerk-Treasurer

Date