

From: [Brendan](#)
To: [Alex Elvin](#)
Subject: Stillpoint restrictions
Date: Wednesday, December 7, 2022 9:41:37 AM
Attachments: [CH counsel opinion on Parker covenants 2009.pdf](#)

Alex,

I understand that Monday's LUPC mentioned a possible role for VCS in holding the proposed development restrictions at Stillpoint.

Just wanted to clarify for the record that we're not the right fit.

While VCS has urged repeatedly that some of those approved lots from the 1988 subdivision be offered by the applicant as Open Space setoffs as part of regulatory review, our organization doesn't have the capacity to act as enforcers of a covenant, particularly one complicated by the reserved right to future development.

Our understanding is that, if it is made part of your written decision, shown on their plan, and recorded in the Registry, your Condition would be made permanent (without the need to convey an interest out to a third-party grantee like VCS or the town in order to secure in-perpetuity protection). Chilmark sought clarification of that question in 2009 with respect to the development restrictions in the 1979 Parker [DRI #110](#). Town counsel wrote, "MVC restrictions are not time limited".

The concern we flagged with the earlier draft of the restriction was applicant's wording of the "benefited" and "burdened" parcels, where covenants can't be drafted to burden one parcel "for the benefit of" another parcel when ownership of both are held in common. But if MVC orders it as part of Conditions, then it appears you cure that problem, something MVC counsel can confirm.

Thanks for the opportunity to clarify the VCS role going forward.

Brendan

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December 17, 2009

VIA E-MAIL: (chodgkinson@chilmarkma.gov)

and

FIRST CLASS MAIL

Chilmark Zoning Board of Appeals
P.O. Box 119
Chilmark, MA 02535

RE: Hugh Weisman: Application for a Guest House

Dear Members of the Board:

You have asked for our opinion as to whether the Board has the power to grant Hugh Weisman's pending application for a guest house on property located at 31 Stonewall Road (the "Weisman Property"). For the reasons set forth below, it is my opinion that you do not.

The following are the facts (in summary form) as I understand them:

On or about September 12, 1979, Doris Parker filed an application with the Chilmark Planning Board for approval of a subdivision plan (the "Application"), which, in paragraph 6, stated:

"The following are the easements and restrictions appurtenant to the land within the proposed subdivision over the land of others:

See attached conditions and restrictions which will be part of the deed of conveyance and covenant[.]”

A deed attached to the Application provides that the property within the proposed subdivision will be “[s]ubject to the following restrictions:

“(1) No buildings shall be erected on said premises except one dwelling house for a single family and one private garage. . . .”

The Planning Board referred the Application to the Martha’s Vineyard Commission (“MVC”) which, on October 4, 1979, voted to authorize the Planning Board to grant “the necessary development permits for the Applicant’s residential subdivision.” The vote proceeded to state that “[t]he Town Planning Board may approve the development proposal. . . .” We have checked with the MVC, and have been informed that the development proposal included the Application, which again referenced the restriction that only one dwelling home is allowed per lot.

The Planning Board approved the Application on December 10, 1979. The Approved Plan contains a specific reference to a covenant dated November 1, 1979 (the “Covenant”).¹ The Covenant, which is recorded in the Dukes County Registry of Deeds at Book 372, Page 141, provides that every deed to a lot shown on the Approved Plan shall contain the following restriction:

“No building shall be erected on said premises except one dwelling house for a single family and one private garage for use therewith”

In 1980, Mr. Weisman and his wife acquired Lot 5 shown on the Approved Plan. Their deed did not contain the restriction limiting development to one single family residence. That

¹ Correspondence in the Planning Board’s file contain references to the Planning Board’s approval of the Application and the Covenant, including negotiations concerning the language to be contained in the Covenant.

omission notwithstanding, it is my opinion that the limitation of one residential dwelling per lot (1) precludes construction of a guest house on the Weisman property for three reasons:

1.) The MVC, in approving the "Development Proposal", imposed by implication the condition that the number of residential dwellings on every lot is limited to one. MVC restrictions are not time-limited.

2.) The Covenant that the developer made with the Planning Board in 1979 does not expire in thirty (30) years. Under G. L. c. 184, § 26, "other restrictions held by a governmental body" are not subject to the thirty year restriction contained elsewhere in Chapter 184.² The Planning Board is a governmental body as defined in Section 26(c).

3.) General Laws c. 41, § 81Y, which governs residential subdivisions, provides in pertinent part as follows:

"In any . . . town in which the subdivision control law is in effect, the board or officer, if any, having the power and duty to issue permits for the erection of buildings, shall not issue any permit for the erection of a building until first satisfied that . . . any condition endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied or waived by the planning board"

Unless relief is obtained from the Planning Board - and the MVC - the condition limiting all lots in the Subdivision to one single family dwelling remains in effect and restricts the Weisman Property.

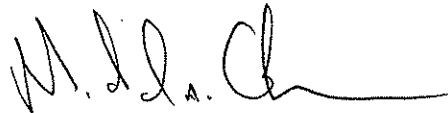
Finally, it is my understanding that other applications for guest houses have been approved in the past for this Subdivision. It is a fundamental principal that prior actions by Town boards do not affect a Board's ability to enforce the statutory rules and regulations which governs the use of

² See G.L. c. 184, § 23.

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property. Accordingly, such prior waivers are irrelevant to your pending deliberations. Please call with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "M.A. Goldsmith", with a long horizontal flourish extending to the right.

Michael A. Goldsmith

MAG/jmh