



P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557
508.693.3453 • FAX: 508.693 7894
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG

Decision of the Martha's Vineyard Commission

DRI 441-M 3 – Airport Gas Station

1. SUMMARY

- Referring Board: Edgartown Building Inspector, Town of Edgartown, MA
- Subject: Development of Regional Impact #441-M3
- Project: To construct and operate a retail gasoline station with a convenience store and a car wash at 3 North Line Road in the Martha's Vineyard Airport Business Park at the same location that Airport Mobil had operated.
- Owner: Martha's Vineyard Airport Commission
- Applicant: Depot Corner Inc. (Lou Paciello, owner); Sean Murphy (Attorney/Agent).
- Applicant Address: 199 Upper Main Street, Edgartown, MA 02539
- Project Location: 3 North Line Road, Edgartown. Lot 33 in the M.V. Airport Business Park.
- Description: To construct and operate a retail gasoline station with a convenience store and a car wash at 3 North Line Road in the Martha's Vineyard Airport Business Park. The fuel operation will consist of 4 pump islands with 8 gas dispensers located under a solar canopy with both gasoline and diesel pumps at all four (4) pump islands. There will be a single bay car wash with water reclamation along the southerly property boundary. There will be a 2,435 sf convenience store building with an attendant area, manager's office, two public handicap accessible bathrooms and a carwash equipment room. The store will sell typical convenience store items such as coffee and prepared foods.
- Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on December 14, 2017.
- Written Decision: This written decision was approved by a vote of the Commission on January 11, 2018.

The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on November 24, 2017 by the Building Inspector of the Town of Edgartown, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Section 1.2 (Modification to a Previous DRI). However the proposal also triggers 3.1a (New Construction over 3,500 sf); 3.4 a (vehicular refueling...); and 3.4 b (fuel and/or hazardous materials...). 3.1a, 3.4a and 3.4 b all require a mandatory public hearing review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, November 30, 2017.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on December 14, 2017 and closed on that date. The Commission voted to waive the need for a post-public hearing LUPC and proceeded directly to Deliberation and Decision.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "North Line Shell Site Plan: S-1" consisting of one 24" by 36" sheet showing locations of buildings and structures, underground storage tanks, parking, curb cuts, existing vegetation, and dimensions with general notes for 3 North Line Road. Prepared by Consulting and Design LLC, 33 Park Plaza, Lee, MA. Scale: 1" = 20'-0". Dated 12-06-17.
- P2 "North Line Shell Storm Water Management: S-9" consisting of one 24" by 36" sheet showing locations of catch basins, storm water infiltration collector, grading, drainage, buildings and structures, underground storage tanks, existing vegetation, and dimensions for 3 North Line Road. Prepared by Consulting and Design LLC, 33 Park Plaza, Lee, MA. Scale: 1" = 20'-0". Dated 9-27-17. Note: Site Plan was modified 12-06-17 (see above) with the proposed car wash location moved.
- P3 "North Line Shell Sight Lighting Plan: L-1" consisting of one 24" by 36" sheet showing locations of lighting, buildings and structures and existing vegetation areas for 3 North Line Road. Prepared by Consulting and Design LLC, 33 Park Plaza, Lee, MA. Scale: 1" = 20'-0". Dated 9-20-17. Note: Site Plan was modified 12-06-17 (see above) with the proposed car wash location moved.

- P4 "North Line Shell Building Elevation: A-2" consisting of one 24" by 36" sheet showing front and side elevation of proposed Gas Station and Convenience Store building for 3 North Line Road. Prepared by Consulting and Design LLC, 33 Park Plaza, Lee, MA. Scale: 1/4" = 20'-0". Dated 9-20-17.
- P5 "North Line Shell Car Wash Elevations: S85" consisting of one 24" by 36" sheet showing front , entry, rear and exit elevations of proposed Car Wash building for 3 North Line Road. Prepared by Consulting and Design LLC, 33 Park Plaza, Lee, MA. Scale: 1/4" = 20'-0". Dated 9-20-17.
- P6 "North Line Shell DRI #441-M3: Narrative" consisting of five 8.5" by 11" pages with project overview for a new gas station describing pump area, underground tanks, hours of operation, car wash, convenience store, required licenses, and offers by the Applicant signed by Sean E. Murphy (Attorney for the Applicant) dated December 11, 2017.

2.4 Other Exhibits

- E1. Referral to the MVC from the Edgartown Building Inspector; November 24, 2017.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, November 27, 2017; and December 14, 2017.
- E3. Letters from the following citizens: Joe Forns (a paid consultant for the previous owner of gas station and property leasee); Dawn Horter of Cappaccio Environmental Engineering (a paid consultant for the previous owner of gas station and property leasee); and Michael L. Mahoney (Counsel for the previous owner of gas station and property leasee).
- E4. Minutes of the Commission's Land Use Planning Committee meeting, November 27, 2017.
- E5. Minutes of the Commission's Public Hearing, December 14, 2017.
- E6. Minutes of the Commission Meeting of December 14, 2017– Deliberations and Decision.
- E7. Minutes of the Commission Meeting of January 11, 2018 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearings.

At the Public Hearing of December 14, 2017:

- Presentation of the project by Sean Murphy (Attorney/Agent for the Applicant); Ron Fortune (Engineer for the Applicant); Lou Paciello.
- Staff reports by Paul Foley, MVC DRI Coordinator.
- Oral testimony from Public Officials: None.
- Oral testimony from Public: None.

3. FINDINGS

3.1 Project Description

- The proposal is to construct and operate a retail gasoline station with a convenience store and a car wash at 3 North Line Road in the Martha's Vineyard Airport Business Park at the same location that Airport Mobil had operated for the previous 20 years. Total 3,323 sf.
- The Site Plan (Revised 12/6) shows the car wash moved in from the property line and the "escape" lane running between the car wash building and the property line; the convenience store is proposed to be 2,275 sf and the building is now proposed to be 2,435 sf with the carwash equipment room in it. There are 12 parking spaces.
- The fuel operation will consist of 4 pump islands with 8 gas dispensers located under a 24' x 98' (2,352 sf) solar canopy (if allowed by electrical code, MV Airport Commission and FAA) with both gasoline and diesel pumps at all four (4) pump islands. The convenience store building will include an attendant area, manager's office/ two public handicap accessible bathroom(s) and a carwash equipment room. The store will sell typical convenience store items such as coffee and prepared foods.
- There will be a 888 sf (18' x 44') single bay car wash with water reclamation along the southerly property boundary approximately where the previous car wash was located.
- The canopy deck drainage systems for storm water will be directed thru the columns and out to the underground on-site storm water collection system.
- The site lighting and under-canopy lighting plan proposed will be similar to the previous.
- The Applicant holds an underground storage license for 37,000 gallons of petroleum products that the Applicant says was renewed from the previous permit. The proposal is to maintain and utilize the same storage volume.
- When the previous operator vacated the premises, all existing improvements including underground storage tanks were removed.
- The applicant now proposes to install (3) new underground double wall fiberglass storage tanks comprising one 10,000 gallon, one 12,000 gallon and one with 15,000-gallon capacity.
- The double wall tanks include a fiberglass tank inside a secondary exterior fiberglass tank with overflow protection devices that limit deliveries to 90% of tank capacity and double wall spill containment sumps and manholes will be provided on each tank.
- Monitoring wells will be installed around the tank perimeter and monitoring equipment and inventory control systems will be provided and installed with audio/visual monitoring system.
- All underground petroleum tank installation and related gasoline equipment and installation will be in accordance with the Commonwealth of Massachusetts storage tank regulations.
- The North Line Shell will operate similar hours to the previous operation from 7:00am - 10:00pm in-season and from 7:00am - 8:00pm in the off-season.
- The plan does not include an oil change operation.
- The applicant has stated they are aware of the requirements for the Massachusetts Department of Environmental Protection (DEP) Underground Storage Tank (UST) permits and will meet the standards necessary to obtain a permit from DEP, including, whatever requirements DEP has regarding water source protection.

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the property was the site of a previous gas station and is in the Airport Industrial Business Park.

A2 The Commission finds that the proposed development would have a minimal impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Wastewater, Groundwater, and Surface Waters, the Commission finds that the wastewater will be treated at the Martha’s Vineyard Airport Wastewater Treatment Facility. The Commission finds that the new Underground Storage Tanks, gasoline recovery and spill prevention will be state of the art systems and subject to more stringent State regulations. The Commission notes that the applicant will deal with the water from the car wash responsibly including significant water reclamation.

With respect to Open Space, Natural Community, and Habitat, the Commission finds that the project is located in a designated business industrial park.

With respect to Night Lighting, Noise, and Air Quality, the Commission finds that the proposal shall have minimal lighting similar to the previous gas station.

With respect to Energy and Sustainability, the Commission finds that the applicant will use its best efforts to have solar panels on the canopy over the gas pumps (subject to the electrical code, MV Airport Commission and FAA approval) and that the nature of the business is to provide fuel for vehicles.

A3 The Commission finds that the proposed development would have a minimal overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the proposal should have a negligible change in traffic from the previous gas station on the same site.

With respect to Scenic Values, Character, and Identity, the Commission finds that the project is located in a designated business industrial park.

With respect to the Economic Impact, the Commission finds that the project will have a beneficial impact on other businesses in the Airport Business Park.

With respect to the Impact on Abutters, the Commission finds that the project will have a beneficial impact on other businesses in the Airport Business Park that currently, without a gas station at the business park, need to travel farther to fuel their vehicle fleets.

A4 The Commission finds that the proposed development would have a neutral impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission notes that the applicant is making a generous donation to mitigate the impact on affordable housing.

A5 The Commission finds that the proposed development would have a beneficial impact on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission notes that the Town will receive property tax revenue.

A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions, the Commission has concluded that the probable benefits of this proposed development at this location exceed the probable detriments in light of the considerations set forth in section 14(a) of the Act.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, is consistent with the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in

June 1991, and the Island Plan adopted by the Commission in December 2010, and as noted previously in section A8 of this decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The Commission notes that Section 10.A.1 of the Edgartown Zoning Bylaws, titled "Permitted Uses" in the B-III, includes section G) Gas stations including a convenience store. Car washes are not specifically identified in Section 10.A.1 but may be inferred under Section 10.V.2 Service businesses: auto or truck service such as repair, lubrication, body shop.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The Commission notes that the proposed development is not within any District of Critical Planning Concern (DCPC).

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on December 14, 2017 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on December 14, 2017.

- Voting in favor: Gail Barmakian; Clarence A. "Trip" Barnes; Josh Goldstein; Fred Hancock; Kathy Newman; Ben Robinson; Doug Sederholm; Ernest Thomas; Richard Toole; and James Vercruyssen.
- Voting against: None.
- Abstentions: None.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission December 14, 2017 and was approved by vote of the Commission on January 11, 2018.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 Affordable Housing:

1.1 As offered by the Applicant, the applicant will make an affordable housing contribution of \$1,858.50 to the Dukes County Regional Housing Authority prior to receipt of a Certificate of Occupancy.

2 Lighting and Landscaping:

2.1 As offered by the Applicant, the applicant will provide a detailed lighting plan for approval by the Martha's Vineyard Commission LUPC prior to receipt of a Certificate of Occupancy.

2.2 As offered by the Applicant, the applicant will provide a detailed landscape plan for approval by the Martha's Vineyard Commission LUPC prior to receipt of a Certificate of Occupancy.

3 Groundwater Monitoring:

3.1 As offered by the Applicant, the applicant will comply with the Revised Groundwater Monitoring Plan dated February 17, 2009.

3.2 The Applicant shall comply with all State and Federal requirements relative to permitting of Underground Storage Tanks and fuel storage and distribution.

4 As-Built Plan

4.1 The Applicant shall submit an as-built plan in both hardcopy and digital format before a Certificate of Occupancy is issued. The as-built plan shall be at a scale of no larger of 1"= 40' and will show all developed features and structures as well as finished topography, environmental features and other significant attributes of the site.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Edgartown Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Edgartown Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.3 Signature Block

James Verduyse
James Verduyse, Chairman

1-25-18
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 25th day of January, 2018, before me,
Lisa C. Morrison, the undersigned Notary Public, personally
appeared James Verduyse, proved to me through satisfactory evidence of
identity, which was/were personal knowledge of identity to be the person(s)
whose name(s) was/were signed on the preceding or attached document in my presence, and who
swore or affirmed to me that the contents of the document are truthful and accurate to the best of
his/her/their knowledge and belief.

[Signature]
Signature of Notary Public

Lisa C. Morrison
Printed Name of Notary
My Commission Expires 18 April 2019

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: February 1, 2018

Deed – Book 1459, page 814

Document Number: 669