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Decision of the Martha's Vineyard Commission

DRI 618-M – Big Sky Tents Building



Bk: 1229 Pg: 1027 Doc: DECIS
Page: 1 of 10 12/13/2010 11:19 AM

1. SUMMARY

Referring Board: West Tisbury Zoning Board of Appeals, Town of West Tisbury, MA

Subject: Development of Regional Impact #618-M

Project: To build a 9,600 sf (footprint) building in the West Tisbury Light-Industrial District to house a tent and party rental business.

Owner: Peter Williams

Applicant: Jim Eddy

Applicant Address: C/O Vineyard Land Surveying, P.O. Box 421, West Tisbury, MA 02575

Project Location: 90 Dr. Fisher Road, West Tisbury Map 21 Lot 12 (1.01 acres).

Description: To build a 9,600 sf (80' by 120' footprint) building on Dr. Fisher Way in the West Tisbury Light-Industrial District to house a tent and party rental business. This is a primarily seasonal business from May through the Christmas Holidays. There would be no washing of dishes on the site. The siding of the three sides of the building facing the public will be a mixture of clapboard and shingle and other effects to make it look like an agricultural building. The building will have 14' tall sidewalls and be less than 28' high at the top of the ridge.

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 November 4, 2010.

Written Decision: This written decision was approved by a vote of the Commission on December 2, 2010.

The permit-granting authorities of the Town of West Tisbury 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 March 24, 2010 by the Zoning Board of Appeals of the Town of West Tisbury, 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 3.301a (construction of a commercial building of more than 2,000 sf.). 3.301 is a mandatory referral requiring 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 Vineyard Gazette, March 5, 2010; and July 9, 2010.

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 July 1, 2010; which was continued to August 5, 2010; and continued again to September 16, 2010 and closed on that date.

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 "Site Plan in West Tisbury for James Eddy" consisting of one 24" by 36" sheet showing the proposed building, landscaping, and parking locations. Prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421 West Tisbury, MA. Drawn August 5, 2010 and revised September 16, 2010. Scale: 1 inch = 20 feet.
- P2 "Elevations" consisting of two 11" by 17" sheets showing basic outline of proposal. Stamped received by MVC July 1, 2010.
- P3 "Offers" consisting of two 8.5" by 11" sheets listing specific aspects of the plan that will be carried out in order to improve the project and mitigate any negative impacts. Prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421 West Tisbury, MA. October 4, 2010.

2.4 Other Exhibits

- E1. Referral to the MVC from the West Tisbury Zoning Board of Appeals; March 24, 2010.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, April 9, 2010; revised July 1, 2010; revised August 5, 2010; revised September 16, 2010.

- E3. Photographs of the site, taken on July 1, 2010 and July 28, 2010 by MVC staff member Paul Foley.
- E4. Letters from the West Tisbury Zoning Board of Appeals (March 24, 2010).
- E5. Letter from David and Libby Fielder
- E6. Letter from area residents signed by: Bill Coogan; Kim Mathews; David Fielder; Libby Fielder; Melissa Manter; Constance Breese; John Pavlik; Charles W. Bowman; Susie Bowman; Sherry Kagan Segal; Danny Segal; Sarah Vail; David Vigneault; Susanna J. Sturgis; Abigail Bailey; Kenneth Bailey; Porter Thompson; Enja Thompson; Hal T. Child; Karen J. Child; Scott Bemudes; and Cynthia Bermudes on September 15, 2010.
- E7. Minutes of the Commission's Land Use Planning Committee meeting, April 12, 2010.
- E8. Minutes of the Commission's Land Use Planning Committee meeting, September 27, 2010.
- E9. Minutes of the Commission's Public Hearing, July 1, 2010.
- E10. Minutes of the Commission's Continued Public Hearing, August 5, 2010.
- E11. Minutes of the Commission's Continued Public Hearing September 16, 2010.
- E12. Minutes of the Commission Meeting of November 4, 2010 – Deliberations and Decision.
- E13. Minutes of the Commission Meeting of December 2, 2010 – Approval of the Written Decision.

2.5 Summary of Testimony

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

- Presentation of the project by Reid Silva (Engineer) and Jim Eddy (Applicant).
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Letters from citizens of Martha's Vineyard.
- Oral testimony from Public on July 1, 2010:
- Oral testimony from Public on August 5, 2010:
- Oral testimony from Public on September 16, 2010:

3. FINDINGS

3.1 Project Description

- When the Light-Industrial (L-I) District was drawn a number of properties, including this one, were split between the L-I District and the Residential District.
- In 2000 the properties that were in both, such as this one, were incorporated into the L-I District, thus making this property available for development of light industrial uses.
- The owner of the property, Peter Williams, had proposed a commercial parking proposal. When the Planning Board heard that the lot had been cleared and was being leased by Allied Waste to

store equipment in the spring of 2008 without a special permit, the Zoning Administrator determined that the un-permitted use had expanded and he issued a Cease and Desist order.

- Peter Williams then applied for permits to create a commercial parking area for 50 trucks, 25 trailers, and 20 pieces of equipment on the property. That proposal was withdrawn.
- The Applicants (Big Sky Tents) propose to build a 9,600 sf (80' by 120' footprint) building on Dr. Fisher Way in the West Tisbury Light-Industrial District to house a tent and party rental business.
- There would be no washing of dishes on the site. This is a primarily seasonal business from May through the Christmas Holidays and a few occasional events outside of those times.
- The siding of the three sides of the building facing the public would be a mixture of clapboard and shingle and other effects to make it look like an agricultural building. The building would have 14' tall sidewalls and be just under 28' high at the top of the ridge.

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 proposed development is in a light industrial area and will provide a transition and buffer between the industrial uses on one side and the residential uses on the other. The Commission notes that the project will bring activity, traffic, and noise to a presently vacant site, but it should be relatively modest compared to other permitted uses.

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 and Groundwater, the Commission finds that the project will have an enhanced de-nitrification system and that there should be minimal impact, especially compared to other industrial uses allowed on the property.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal will restore some of the vegetation to the property in that most of the trees had been removed by the previous owner

With respect to Night Lighting and Noise, the Commission finds that the project is consistent with the light industrial zoning designation and that there are limits on the lighting and hours of operation. The Commission notes that the project will bring lighting and noise to a property that now has none; however, these should be less than could have been possible with other permitted uses.

With respect to Energy and Sustainability, the Commission finds that the vast majority of the interior space (7,600 sf) is unconditioned storage space for the storage of equipment and materials. The Commission notes that portion of the building that is conditioned space (2,000 sf) will exceed the Mass Energy requirements by 20%.

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

With respect to Traffic and Transportation, the Commission finds that the proposed easement to the Bizarro property (Map 21 Lot 12.1) should reduce truck traffic on Pine Hill Road. The Commission notes that there will be an increase in truck traffic, though less than could have been possible with other permitted uses.

With respect to Scenic Values, Character, and Identity, the Commission finds that the building and operation of the business should have a relatively limited impact compared to other potentially permitted uses and to the nearby heavier industrial uses such as the adjacent large landscaping and garbage operations. The Commission notes that the new building will be much larger than the residential buildings in the adjacent zone, though the barn look could mitigate this to some extent, and that the building should help screen the large compost pile to the north (Map 16 Lot 264).

With respect to the Impact on Abutters, the Commission finds that the easement to the Bizarro property should reduce traffic on Pine Hill Road and that the easement and the building will buffer the compost pile. The Commission notes that there will be traffic, noise, and visual impacts on nearby residences, though these should be relatively modest compared to other permitted uses.

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 finds that the project is for an existing business that does not anticipate any growth due to the proposal. The Commission notes that the Applicant will make a \$5,000 donation to an island affordable housing organization.

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

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 such as those relating to wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment 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, advances 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 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 finds that the project is subject to Special Permit review by the Zoning Board of Appeals and Site Plan Review by the Planning Board.

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 finds that part of the project is within the Dr. Fisher Special Way DCPC.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on November 4, 2010 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 November 4, 2010.

- Voting in favor: John Breckenridge; Christina Brown; James Joyce; Chris Murphy; Ned Orleans; Doug Sederholm; and Brian Smith.
- Voting against: Lenny Jason and Camille Rose.
- 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 November 4, 2010 and was approved by vote of the Commission on December 2, 2010.

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 Towns attorney's fees and costs incurred in obtaining judicial relief.

1 Landscaping

- 1.1 As offered by the Applicant, tree and brush removal shall be limited to that which is necessary to construct the structure and install the driveway and parking areas. Buffer screening shall be provided by supplementing the existing vegetation with white pine clusters where needed.
- 1.2 As offered by the Applicant, a 20-foot buffer along Dr. Fisher and Pine Hill Roads shall be flagged before construction and no vegetation shall be cut within this buffer.
- 1.3 As offered by the Applicant, a general landscape plan has been presented. A detailed plan shall be submitted for final review and is subject to the approval of the MVC Land Use Planning Committee prior to issuance of Certificate of Occupancy ("CO").

2 Hours of Operation

- 2.1 As offered by the Applicant, due to the sensitivity of the abutting residential neighborhood, hours of operation for the proposed facility shall be limited to 7:00 a.m. to 7:00 p.m. every day.

3 Exterior Lighting

- 3.1 As offered by the Applicant, exterior lighting on buildings shall be limited to that required by code, shall be downward shielded to prevent light spilling off the property and shall be either motion-sensitive or on timers to ensure that they are turned off when the building is closed.
- 3.2 As offered by the Applicant, all exterior and interior lights, other than those required by code, shall be turned off at close of business.
- 3.3 As offered by the Applicant, there shall be no flood lighting.

4 Affordable Housing

- 4.1 As offered by the Applicant, the applicant shall make a \$5,000 donation to an Island affordable housing organization prior to issuance of a Certificate of Occupancy by the Town.
- 4.2 As offered by the Applicant, the applicant shall continue to offer discounts on rentals for affordable housing fundraisers.

5 Wastewater

- 5.1 As offered by the Applicant, the Applicant shall not clean dishes, tents, or other rental equipment on this property.
- 5.2 As offered by the Applicant, the property shall be restricted from any outdoor hanging or drying of tents.
- 5.3 As offered by the Applicant, the septic system shall consist of a drip dispersal leaching facility. Although not qualified by DEP as an "Enhanced" septic system, the general professional opinions of the system is that it shall provide substantial nitrogen reduction through the utilization of the grass root zone.
- 5.4 As offered by the Applicant, a grass berm shall be installed around all parking areas to help treat rain runoff prior to infiltration into the ground, the details of which shall be included in the final landscape plan to be submitted for the review and is subject to the approval of LUPC.

6 Dr. Fisher Road

- 6.1 As offered by the Applicant, the applicant shall only use sand hardener to repair potholes and ruts.
- 6.2 As offered by the Applicant, the applicant shall not build or create any new turnouts.
- 6.3 As offered by the Applicant, the applicant shall retain much of the existing vegetation along Dr. Fisher and Pine Hill Roads for natural native buffer.
- 6.4 As offered by the Applicant, the applicant shall grant a recorded permanent easement to the neighboring property (Map 21 Lot 12.1) currently used by Bizzarro to create and allow use of an access way through the property to help relieve vehicular traffic that currently uses Pine Hill Road, before issuance of a Building Permit.

7 Architectural Detailing

- 7.1 As offered by the Applicant, the north-, east-, and south-facing exterior walls shall be shingled. The fourth side facing the parking area shall be steel siding or shingles.
- 7.2 As offered by the Applicant, the building will be designed with architectural details such as a cupola, doors, windows, trim work and other details resembling a typical West Tisbury barn, in order to promote a rural/barn façade and to minimize the building's visual impact on the neighborhood.
- 7.3 As offered by the Applicant, the design shall include windows and/or skylights or translucent panels to reduce energy use by allowing day-lighting of the interior, while minimizing the impact of lighting on abutters.
- 7.4 As offered by the Applicant, final architectural plans and details shall be submitted for the review and are subject to the approval of the MVC LUPC before a Building Permit is issued.

8 Energy and Environmental Building Policy

- 8.1 As offered by the Applicant, 2,000 S.F. of the proposed structure shall be conditioned space with the remaining 7,600 S.F. being un-conditioned storage space for equipment and materials.
- 8.2 As offered by the Applicant, the conditioned space shall exceed the requirements of the Massachusetts RES-Check audit by at least 20%.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of West Tisbury 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.

The Town' building inspector shall not issue a Building Permit until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following conditions in this Decision have been satisfied: 1.2; 6.4; and 7.4.

The Town' building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following condition in this Decision has been satisfied: 1.1; 1.3; 3.1; 3.3; 4.1; 5.4; 6.3; 7.1; and 7.2.

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 West Tisbury 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

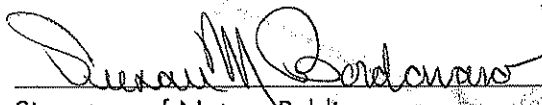

Christina Brown, Chairman

12/13/10
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 13th day of December, 2010, before me,
Susan M. Bordonaro, the undersigned Notary Public, personally
appeared Christina Brown, proved to me through satisfactory evidence of identity,
which was/were personal knowledge 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 of Notary Public

Printed Name of Notary
My Commission Expires

SUSAN M. BORDONARO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 21, 2014



6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____

Deed - Book _____, page _____

Attest:


Dianne E. Prewitt Register