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Decision of the Martha's Vineyard Commission

DRI 623-M3 – Wavelengths Modifications

1. SUMMARY

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- Referring Board: Edgartown Planning Board, Town of Edgartown, MA
- Subject: Development of Regional Impact #623-M3
- Project: To make modifications to a previously approved three-story 5,309 sf mixed-use structure including: larger dormers on the 3rd floor; moving a 3rd floor balcony; an elevator appurtenance; different windows; and a landscape plan.
- Owner: Jayne Leaf
- Applicant: Jayne Leaf
- Applicant Address: P.O.B. 1870, Edgartown, MA 02539
- Project Location: 223 Upper Main Street, Edgartown Map 20-A Lot 95 (0.29 acres)
- Description: To make modifications to a previously approved 5,309 sf mixed-use structure with larger dormers on the 3rd floor; moving a 3rd floor balcony from the back to the side; an elevator appurtenance; different windows; and a landscape plan. The building is a three-story mixed-use building with a full basement. The proposal could have up to three (3) units of office/shop. There are two 2-bedroom apartments on the second floor and a 3-bedroom apartment on the third floor.
- 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 15, 2016. This written Decision supersedes DRI 623; DRI 623-M; and DRI 623-M2.
- Written Decision: This written decision was approved by a vote of the Commission on January 5, 2017.

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 1, 2016 by the Planning Board 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 3.1a (development of commercial over 3,000 sf) and 4.2 (Mixed-Use Development), both are mandatory referrals. However, the project was a previously approved building that was not built exactly as approved. Therefore the project should have been referred under 1.2 (Previous DRI) requiring a Modification Review to see if it should be reviewed with a public hearing as a Development of Regional Impact. On November 17, 2016 the MVC voted that the modifications required a public hearing review as a DRI 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 M.V. Times on December 1, 2016.

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 15, 2016 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 "Wavelengths Site Plan" consisting of one 24" by 36" sheet showing the proposed building location, parking, and drainage with three details (catch basin, leaching pit, and vegetative bioretention). Prepared for Jayne M. Steidle (sic) & Melissa R. Montession by Schofield, Barbini & Hoehn Inc. 12 Surveyor's Lane, P.O. Box 339, Vineyard Haven, MA. Drawn February 25, 2011. Scale: 1" = 20'.
- P2 "Elevations: Serial Number 2181; Order Number 6117" consisting of eight 11" by 17" sheets showing proposed elevations of left, front, rear, and right sides of the revised building at 223 Upper Main Street, Edgartown. Elevations prepared for Jayne Leaf by Icon Legacy Custom Modular Homes LLC, 246 Sand Hill Road, Selinsgrove, PA 17870. Builder listed as "Go Modular". Dated 2/18/16; revised 4/5/16.
- P3 "Landscape Plan: 223 Upper Main Street, Edgartown – L.1" consisting of one 24" by 36" sheet showing site plan, building and proposed plantings with plant schedule prepared by Sunflower Designs Landscape & Garden Design located at 7 Barbara Drive, Bristol, RI 02809. Dated 04/04/16; revised 9/28/16.

- P4 "Offers" consisting of the 12 or the 13 items (Not including # 11) on the list of (Edgartown) Planning Board Requests for Special Permit Application of Wave Lengths/Jayne Leaf, 223 Upper Main Street, dated September 15, 2016.

2.4 Other Exhibits

- E1. DRI Referral Form and Letter to the MVC from the Edgartown Planning Board; November 1, 2016.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, November 30, 2016; revised December 15, 2016.
- E3. Photographs of the site, taken on November 7, 2016 and December 12, 2016.
- E4. Letter from James Harper urging the Commission to approve this project which he says has no regional impact and notes that the Edgartown Planning Board complained last year about the MVC looking at projects like this.
- E5. Letter from Bernhardt Ochse criticizing the planning board for delaying the project for so long.
- E6. Letter from Michael Emig saying that it is his opinion that this change is a "non issue" and that the project be allowed to be finished with the minor change.
- E7. Letter from Peter Sullo stating that "This does not seem to rise to the level of having an impact regionally and the MVC should allow the town to finish what it started with these people".
- E8. Letter from Robin Sherman Harper that it is her opinion that it will be a great asset to the town and "please allow them to continue building as soon as possible".
- E9. Letter from Jackie Stallings in support of the proposal.
- E10. Minutes of the Commission's Land Use Planning Committee meeting November 1, 2016.
- E11. Minutes of the Commission's Land Use Planning Committee meeting, November 7, 2016.
- E12. Minutes of the Commission's Public Hearing and Deliberations and Decision, December 15, 2016.
- E13. Minutes of the Commission Meeting of January 5, 2017 – 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 Colin Young (Project Manager); Phil Miller (Miller Starbuck Construction); Jayne Leaf (Owner).
- Staff reports by Paul Foley, MVC DRI coordinator.
- Oral testimony from Members of Town Boards on December 15, 2016: Bob Sparks (Planning Board).
- Oral testimony from Public on December 15, 2016: Kelly Hess; Stacy Wallace; Fred Mascolo; Roy Riley; Phil Mercier; Barbara Dacey; and Janna O'Shaunessy.

3. FINDINGS

3.1 Project Description

- The proposal is to make modifications to a previously approved three-story 5,309 sf mixed-use structure including larger dormers on the 3rd floor; moving a 3rd floor balcony from the back to the side; adding an elevator appurtenance; some different windows and a landscape plan.
- The building is a three-story mixed-use building with a full basement.
- The proposal could have up to three (3) units of office/shop
- There are two 2-bedroom apartments on the second floor.
- There is 3-bedroom apartment on the third floor
- All commercial and residential units will be sold as condominium units.
- Project History:
 - DRI 623: On December 2, 2010 the MVC approved a plan to remove an existing one-story building at 223 Upper Main Street and replace it with a three-story 4,198 sf mixed-use building and build a new three-story 5,381 sf building with three 2-bedroom residential units in the back of the property.
 - DRI 623-M: When the plan returned to the Planning Board they found that the lack of a vehicular outlet to adjoining properties meant that the Floor Area Ratio (F.A.R.) could not exceed 50%. Therefore the plan was modified to the 2011 proposal which eliminated the 5,381 sf building in back and increased the size of the front building by 1,183 sf (22%). The new proposal had 2,844 sf of commercial space on the first and second floors (up to 5 units); a 1,140 sf two-bedroom apartment on the third floor; and a 1,990 sf basement. On April 7, 2011 the MVC voted that the proposal was not a significant change from DRI 623 to warrant a public hearing.
 - DRI 623-M2: On October 2, 2014 the MVC voted that the proposal to convert the second floor of the approved DRI 623-M decision from two (2) offices to two 2-bedroom apartments in an approved but not yet built building located at 223 Upper Main Street was not a significant enough change from DRI 623 and DRI 623-M (Wavelengths) to warrant a public hearing It was still subject to all of the Conditions of the original DRI 623 Decision and DRI 623-M. Therefore the DRI 623-M2 approved plan was for a 5,309 sf three-story mixed use building with up to 3 offices/shops, with two 2-bedroom apartments on the second floor; and one 2-bedroom apartment on the third floor. The two second floor decks were added at that time.

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 will be a mixed-use, infill project located in the developed business district of the town that will serve the needs of the community and is located near to services. The Commission notes that the building has already been constructed but not finished.

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 be connected to the town sewer and the stormwater runoff will be collected on site.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal is infill development located in a dense neighborhood.

With respect to Night Lighting and Noise, the Commission finds that the applicants have offered to keep exterior lighting to a minimum.

With respect to Energy and Sustainability, the Commission notes that one of the reasons the Applicant gave for not being able to remove the larger dormers was that it would negatively impact the energy efficiency of the buildings which far exceeds the Mass Energy requirements.

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 notes that the site is on an already developed commercial road with sidewalks and is on several bus routes. The number of parking spaces is adequate.

With respect to Scenic Values, Character, and Identity, the Commission finds that the architecture is compatible with the surrounding buildings but notes that the building was built with more massing than originally approved and that, in retrospect, it would have been preferable to have pushed the building back farther on the lot.

With respect to the Impact on Abutters, the Commission finds that there would be a limited impact on the view of abutters.

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 would create new moderately sized residential units downtown and that one of the units has been reserved for an onsite manager.

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).

The Commission finds the project is consistent with the Edgartown B-2 Upper Main Street Master Plan.

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 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 Commission finds that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991, as well as those of the Island Plan, adopted by vote of the Commission on December 10, 2009.

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 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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on December 15, 2016 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 15, 2016.

- Voting in favor: Clarence A. "Trip" Barnes III; Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; James Joyce; Katherine Newman; Ben Robinson; Abe Seiman; Linda Sibley; Ernest R. Thomas; James Vercruyse.
- 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 15, 2016 and was approved by vote of the Commission on January 5, 2017.

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, the three street trees in front on Upper Main Street will remain.
- 1.2 As offered by the Applicant, the eight mature trees along the southern border with the Melone property (Map 20-A Lot 97.2) will remain. If any of them do not survive the development they will be replaced. One may be moved to another location on the property.

- 1.3 As offered by the Applicant, an Elm tree shall be planted in the island buffer in front of the parallel parking spaces.
- 1.4 As offered by the Applicant, the final formal landscaping plan shall come back for the review and approval of the LUPC.
- 1.5 As offered by the Applicant, all fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.

2 Exterior Lighting

- 2.1 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 not needed.

3 Affordable Housing

- 3.1 As offered by the Applicant, the applicant shall make a \$3,309 donation to an Island affordable housing organization. This donation will be made prior to the issuing of the Certificate of Occupancy by the Town.

4 Wastewater

- 4.1 As offered by the Applicant, the project shall be connected to the Edgartown Wastewater Treatment Facility.
- 4.2 As offered by the Applicant, the final storm water plan with details of design and sizing will return to the LUPC for review and approval.

5 Energy

- 5.1 As offered by the Applicant, the buildings shall be built with high density foam insulation and exceed the Massachusetts Building Code by 20%.

6 Dormant Easement

- 6.1 As offered by the Applicant, the Applicants shall grant a dormant easement to abutting properties if the Town of Edgartown or MVC requests access to or through this property.
- 6.2 The dormant easement going to the Town of Edgartown shall be 14-foot wide running near the back of the property between Map 20-A Lot 93 and Map 20-A Lot 97.2 and shall be recorded in the Registry of Deeds. This easement may be exercised by the Town, in conjunction with similar easements on abutting properties, to provide a back service road running along the rear of the commercial district. The easement shall be recorded before issuance of the Certificate of Occupancy by the Town .

7 Architectural and Construction Details

- 7.1 As offered by the Applicant, the Applicants shall include all gutters and downspouts on elevations and renderings.
- 7.2 As offered by the Applicant, the Applicants shall include all exterior lighting on elevations, renderings and site plans.

- 7.3 As offered by the Applicant, the Applicants shall include both handicapped ramps on elevations, site plan and renderings.
- 7.4 As offered by the Applicant, the Applicants shall include dark green shutters on all windows on elevations and renderings.
- 7.5 As offered by the Applicant, the Applicants shall include scaled size and placement of all windows on elevations and renderings.
- 7.6 As offered by the Applicant, the Applicants shall include placement of flower boxes on front and Clarion side of building on elevations and renderings.
- 7.7 As offered by the Applicant, the Applicants shall include placement of handicapped parking spaces on landscaping and site plans.
- 7.8 As offered by the Applicant, the Applicants shall include attractive covers to hide electric boxes on corner of building on elevations and renderings.
- 7.9 As offered by the Applicant, the Applicants shall include covers or greenery to hide HVAC compressors on elevations and renderings.
- 7.10 As offered by the Applicant, the Applicants shall include new detailed landscaping on site plan, elevations & renderings (example: similar to Dance Studio abutter).
- 7.11 As offered by the Applicant, the Applicants shall provide a copy of the association/condominium covenants and bylaws, including who will be responsible for maintenance of the exterior of the structure, landscaping, parking lot and access.
- 7.12 As offered by the Applicant, the Applicants shall provide the drawing for the rail system on all decks and the elevator railings.

8 Substantial Alterations

- 8.1 As offered by the Applicant, should they ever substantially alter the use of the premises from the proposed uses it shall return to the Martha's Vineyard Commission to request approval of said alteration.

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.

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; 1.2; 1.3; 1.4; 2.1; 3.1; 4.1; 4.2; 5.1; 6.2; 7.1 - 7.12.

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 Vercruyse
James Vercruyse, Chairman

1.19.17
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 19th day of January, 2017, before me, Donna Lee Stewart, the undersigned Notary Public, personally appeared Jim Vercruyse, proved to me through satisfactory evidence of identity, which was/were dures license 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.

Donna Lee Stewart
Signature of Notary Public


Donna Lee Stewart
Printed Name of Notary
My Commission Expires Feb 24, 2023



6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: Jan 23, 2017

Deed - Book 1428, page 270

 **DONNA-LEE STEWART**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 24, 2023