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Decision of the Martha's Vineyard Commission

DRI 645-M2 – O.B. Bowling Conditions Changes

1. SUMMARY

- Referring Board:** Building Inspector, Town of Oak Bluffs, MA
- Subject:** Development of Regional Impact # 645-M2 (Barn, Bowl and Bistro)
- Project:** To modify the Conditions in the DRI 645 Decision relative to exterior lighting and, on a trial basis, opening and closing time;; capacity and limits of the function room; and live amplified music.
- Owner:** Three G LLC, and MV Bowl LLC as Lessee.
- Applicant:** Larkin B. Reeves; Sam Dunn; and Robert Sawyer DBA MV Bowl LLC
- Applicant Address:** P.O. Box 1408, Vineyard Haven, Massachusetts 02568
- Project Location:** 13 Uncas Avenue, Oak Bluffs Map 11 Lot 153.1 (0.62 acres)
- Description:** The proposal is to modify the Conditions in the March 2014 DRI 645 Decision including extending the opening and closing time; installing exterior lighting in the parking lot; expanding the capacity of the function room; removing the limits of how often the function room can be used; and allowing live amplified music. Except for the parking lot lighting, the modifications are requested on a trial basis to demonstrate their appropriateness, with the intent of subsequently seeking permanent modification of the conditions.
- Decision:** The Martha's Vineyard Commission (the Commission) approved the modification to allow parking lot lighting and the temporary modification of additional conditions, as further conditioned herein, at a vote of the Commission on June 2, 2016.
- Written Decision:** This written decision was approved by a vote of the Commission on June 16, 2016.

The permit-granting authorities of the Town of Oak Bluffs 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 February 24, 2016 by the Building Inspector of the Town of Oak Bluffs, 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 2.1 (Modification to a Previous DRI). The Applicant chose to go straight to a public hearing rather than wait for the full Commission to vote on whether the modification required a public hearing review as a Development of Regional Impact and the project was reviewed as a DRI 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 on April 21, 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 May 5, 2016, which was continued to May 19, 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 "PROPOSED MINOR MODIFICATIONS TO DRI 645: MV Bowl LLC dba The Barn, Bowl & Bistro, 13 Uncas Avenue, Oak Bluffs, MA 02557" submitted to the MVC by Bob Sawyer on February 22, 2016 consisting of three pages of descriptions and requested modifications to DRI 645.
- P2 "MVC Offers" consisting of one page of a revised modification request relative to conditions in the DRI 645 Decision submitted by Sam Dunn to the MVC on May 18, 2016.
- P3 "Oak Bluffs Bowling Alley – Sound Barriers For AC Condenser" consisting of one page of recommendations to the Applicant from acoustic consultant Cavanaugh Tocci signed by Timothy J. Foulkes dated May 13, 2016.

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Building Inspector; received February 24, 2016.
- E2. MVC Staff Report May 5, 2016; revised May 19, 2016.
- E3. Photographs of the site, taken on March 17, 2016 by MVC staff member Paul Foley.
- E4. Photographs of the site, taken on May 19, 2016 by MVC staff member Priscilla Leclerc.
- E5. Letters were received from the following: Byron Barnett 2016-03-09; James Hale 2016-05-05; Byron Barnett 2016-03-09 with attachment of the 2014 Cerami Acoustics Report; Jamie Wallace

2016-05-05; Michael Jacobs 2016-05-05; Michael Feng, Peggy Barmore and others 2016-03-10; Letter Peter Sullo 2016-05-05; Tammy King 2016-05-05; Cindy Flanders 2016-05-05; Danetta Thornton Owens 2016-04-28; Feng et al 2016-04-29 with attachment; Deb Milne Ralph Friedman 2016-05-05; James Geary 2016-05-05; Wendy Jacobs 2016-05-18; Tom Murphy 2016-05-18; Tia Sequeria 2016-05-18; Stephen Furtaw 2016-05-18; Rise Terney 2016-05-18; Nathan Thompson 2016-05-18; Michael Feng, Peggy Barmore and others 2016-05-18; Michael Feng, Peggy Barmore and others 2016-05-18 Attachment MA Noise Regulations; Doris and Jay Clarke 2016-05-18; Danetta Thornton Owens 2016-05-18; David Merna 2016-05-18; Brooke Bartletta 2016-05-18; Amy Sullivan 2016-05-18; Change.Org Online Petition 2016-05-18; Daniel Cassidy 2016-05-19.

- E6. Minutes of the Commission's Land Use Planning Committee meeting, March 14, 2016.
- E7. Minutes of the Commission's Public Hearing, May 5, 2016.
- E8. Minutes of the Commission's Continued Public Hearing, May 19, 2016.
- E9. Minutes of the Commission's Post Public Hearing Land Use Planning Committee meeting, May 25, 2016.
- E10. Minutes of the Commission Meeting of June 2, 2016 – Deliberations and Decision.
- E11. Minutes of the Commission Meeting of June 16, 2016 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on May 5, 2016.

- Presentation of the project by Reid Sam Dunn; Michael Sawyer; Erik Hammarlund (attorney).
- Staff reports by Paul Foley, MVC DRI Coordinator.
- Oral testimony from Public Officials: Gail Barmakian (Selectperson and Wastewater Commissioner); Mark Barbadoro (Building Inspector);
- Oral testimony from Public : Byron Barnett; Peggy Barmore; Amy Billings; and Hyung Suk Lee;

The following is a summary of the principal testimony given during the public hearing on May 19, 2016.

- Presentation of the project by Reid Sam Dunn; Erik Hammarlund (attorney).
- Staff reports by Paul Foley, MVC DRI Coordinator.
- Oral testimony from Public: Katherine Sullivan (attorney speaking on behalf of the Hiawatha Path Condominium Association); Maura McGroarty; Debbie Milne; Peggy Barmore; Ralph Friedman; and Steve Auerbach.

3. FINDINGS

3.1 Project Description

- The proposal is to modify the Conditions in the DRI 645 Decision including extending the opening and closing time; installing exterior lighting in the parking lot; removing the capacity restriction of

- the function room; removing the limits on how often the function room can be used; and allowing live amplified music.
- The modifications were requested on a trial basis to be until October 17, 2017 before becoming permanent. The Commission changed the date to January 31, 2017, after which the modifications – except for the parking lot lighting – would no longer be valid.
 - The Applicant submitted a clarified modification request on Wednesday May 18, 2016:
 - Condition 1.1: The Applicant asked to change the existing 9:00 AM opening hour to 8:00 AM.
 - Condition 1.2: The Applicant asked to remove the restrictions on last call for food, alcohol and bowling. Last call is currently conditioned to be 10:30 PM on weekdays and 11:30 PM Friday and Saturday night. The Applicant asked for closing time to be 30 minutes earlier than the town policy for other establishments serving liquor.
 - Condition 1.4: The Applicant asked to remove the restrictions on the number and size of events (currently limited to 50 people twice per week). The Applicant has testified that the second floor event space has a capacity of 98.
 - Condition 5.5: The Applicant asked to remove the restriction on live amplified music. Offers asked for unlimited "trios" and unlimited "larger musical groups (bands)" for client events and bands twice monthly for Barn-sponsored events.
 - Condition 8.1: The Applicant asked to change the condition on exterior lighting and requested lighting in the parking lot with details to come back to LUPC. The request is for a single 20' tall lamppost in the parking lot. This modification is intended to be permanent.
 - Compliance: During the review of the proposed modifications, the project was found to not be in compliance with two of the conditions in the DRI 645 Decision. The affordable housing condition that there shall be two affordable housing units certified by the DCRHA was not in compliance. Two of the HVAC units face a residentially zoned house which is in violation of condition 5.9. The number and size of events is difficult to monitor and therefore compliance is not known.
 - During the DRI public hearing process some abutters requested a sound absorbing fence be installed. The Applicant submitted a letter from their acoustic expert (Cavanaugh Tocci Associates) suggesting a 5/8 inch layer of plywood be added to the back of the existing stockade fence which could help attenuate the decibels.

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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on June 2, 2016 and made its decision on the temporary modifications at the same meeting.

The following Commissioners, all of whom participated in all hearings and deliberations on this project, participated in the decision on June 2, 2016.

- Voting in favor: Clarence 'Trip' Barnes III; John Breckenridge; Christina Brown; Rob Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; Jim Joyce; and Ernie Thomas.
- Voting against: Abe Seiman.
- Abstentions: None.

Based on this vote, the Commission approved the application for the modification to certain conditions of the DRI 645 Decision on a temporary basis as listed in section 5 below.

This written Decision is consistent with the vote of the Commission June 2, 2016 and was approved by vote of the Commission on June 16, 2016.

5. MODIFIED CONDITIONS

Compliance

The Applicant shall be in compliance regarding all conditions in the DRI 645 and DRI 645-M Decisions and, in particular, those conditions on affordable housing and the placement of HVAC units within 60 days from the date of this approval. If the compliance issues have not been satisfied upon that date, these modifications shall be revoked and the former conditions shall apply.

Modified Conditions

After reviewing the proposal for temporary modifications to certain conditions of an existing Development of Regional Impact, the Martha's Vineyard Commission hereby modifies the following conditions on a trial basis to January 31, 2017. The Applicant may re-apply after January 3, 2017 for permanent modification to the original conditions of DRI 645 through a public hearing to see whether the Commission shall allow the trial modifications on a permanent basis. During the trial period the MVC shall seek to monitor the impacts of the modifications. The complete modification process including all MVC review provisions shall occur before the end of January 2017. If the MVC process has not been completed by that date, the conditions will revert back to those in place prior to the modifications included in this decision.

1. Hours of Operation/Business Practices

1.1 Existing Condition 1.1 shall be changed on a trial basis from:

- As offered by the Applicant, the business will generally be open daily, year round. The opening hour shall not be before 9 AM.

To:

- The business will generally be open daily, year round. The opening hour shall not be before 8:30 AM.

1.2 Existing Condition 1.2 shall be changed on a trial basis from:

- As offered by the Applicant, there shall be a "last call" on food, alcohol and bowling at 10:30 PM. Sunday through Thursday and at 11:30 PM Friday and Saturday. Alcohol served at last call shall be limited to one per customer.

To:

- The "last call" on food, alcohol and bowling and closing time of the business shall be determined by the Selectmen.

1.4 Existing Condition 1.4 shall be changed on a trial basis from:

- As offered by the Applicant, the use of the event room shall be limited from June 15 to September 15 to twice per week for events lasting about 3 hours and to an average of two events per week from September 16 to June 14. A maximum of 50 people shall be allowed at any event at any time during the year.

To:

- The event room may be occupied with a maximum occupancy of 94 people. The room may be used without limitation for events ending before 9:00 PM. For events exceeding 9:00 PM, the event room may be used only twice per week.

5. Noise

5.5 Existing Condition 5.5: shall be changed on a trial basis from:

- As offered by the Applicant, the applicant agrees that the facility shall not allow amplified live music on the premises.

To:

- The facility shall be allowed amplified live music on the premises for up to a trio.

5.10 New Condition

- The Applicant shall remove the HVAC units that face a residentially zoned house in violation of Condition 5.9 in the DRI 645 Decision and shall apply a 5/8 inch layer of plywood on the entire existing stockade fence (on the side facing the bowling alley) in order to help attenuate the noise emanating from the establishment.

8. Lighting Mitigation

8.1 The following provision of the existing Condition 8.1 shall be changed on a permanent basis from:

- As offered by the Applicant, a final lighting plan shall be submitted to and is subject to the approval of LUPC before construction begins. It should be based on the following principles:
 - The parking lot shall be lit by existing streetlights and ambient lighting from the building.
 - There shall be no exterior lighting on the south or west elevations of the building.
 - All exterior lighting shall be downward shielded to prevent direct light from escaping the property.
 - Exterior lighting shall be limited to that required for safe access to the property entrances, and shall be on timers to ensure that they are turned off during the day as well as turned off during the night when the business is closed.

- Sign Lighting shall be gooseneck type, shielded to prevent glare for drivers.

To:

- As offered by the Applicant, a final lighting plan shall be submitted to and is subject to the approval of LUPC. It should be based on the following principles:
 - The parking lot shall be lit by a single lamppost in the center of the parking lot with details and specifications to be reviewed and approved by the LUPC prior to installation.
 - There shall be no exterior lighting on the south or west elevations of the building.
 - All exterior lighting shall be downward shielded to prevent direct light from escaping the property.
 - Exterior lighting shall be limited to that required for safe access to the property entrances, and shall be on timers to ensure that they are turned off during the day as well as turned off during the night when the business is closed.
 - Sign Lighting shall be gooseneck type, shielded to prevent glare for drivers.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of Oak Bluffs may now grant the request for approval of the Applicant's proposed modified conditions contained herein on a temporary basis 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 DRI 645, DRI 645-M and above temporary 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 Oak Bluffs Town Clerk.

6.3 Length of Validity of Decision

Except for the modification of the parking lot lighting, the modifications approved in this Decision shall expire January 31, 2017. The temporarily modified conditions will be monitored for impacts to traffic, parking, noise, abutters and any other ramifications that may result from their implementation. The Applicant may apply for permanent modifications to the original conditions of DRI 645 through a DRI public hearing process after January 3, 2017 to see whether the Commission shall approve the trial modifications on a permanent basis.

6.4 Signature Block

James Verduyssen
James Verduyssen, Chairman

6-21-16
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 21st day of June, 2016, before me,
Jo Ann Taylor, the undersigned Notary Public, personally
appeared Jim Verduyssen, proved to me through satisfactory evidence of identity,
which was/were driver's 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.

Jo Ann Taylor
Signature of Notary Public

Jo Ann Taylor
Printed Name of Notary

My Commission Expires February 9, 2018

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 7, 2016

Deed - Book _____, page _____

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