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Decision of the Martha's Vineyard Commission

DRI 656 – DeBettencourt High Point Lane



Bk: 1396 Pg: 1018 Doc: DECIS
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1. SUMMARY

Referring Board: Tisbury Building Inspector, Town of Tisbury, MA

Subject: Development of Regional Impact #656

Project: The proposal is to construct a 5,166 gsf (4,500 sf footprint) vehicle repair garage with four repair bays able to accommodate trucks, a vehicle inspection station, offices, waiting area, and storage.

Owner: Pachico Family Trust (sale pending permitting)

Applicant: Joseph DeBettencourt. The Applicant has a Purchase & Sale Agreement with Pachico Family Trust pending permits.

Project Location: High Point Lane, Tisbury. Part of Map 22-A Lot 13.11. This proposal contains two lots (Lot 2 - 12,433 sf/0.29 acres & Lot 3 - 12,734 sf/0.29 acres) of a four lot division that was remanded to the town by the MVC in 2012 and recently recorded. Total of the two lots is 25,167 sf or 0.577 acres.

Description: To construct a 5,166 gsf (4,500 sf footprint) vehicle repair garage with four repair bays able to accommodate trucks, a vehicle inspection station, offices, waiting area, and storage. The proposal involves major topographical alteration to prepare a half-acre site on a hillside that drops 30 feet to be re-graded and supported with retaining walls on all sides at or near the property lines.

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 3, 2015.

Written Decision: This written decision was approved by a vote of the Commission on January 7, 2016.

The permit-granting authorities of the Town of 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 August 12, 2015 by the Building Inspector of the Town of 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 3.1a (development over 3,000 s.f.) which requires a mandatory review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, October 1, 2015.

Hearings: The Commission held a public hearing on the Application on October 15, 2015 pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831. The hearing was continued to and held on November 5, 2015. The public hearing was kept open for the purpose of keeping the written record open until 5:00 PM, November 17, 2015 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" consisting of one 24" by 36" sheet showing the proposed building, landscaping, drainage, and parking locations. Prepared for Joseph de Bettencourt by Schofield, Barbini, & Hoehn Inc.: Land Surveying and Civil Engineering, 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. Scale: 1" = 20'. Dated June 26, 2015; revised 11/05/15.
- P2 "Floor Plans & Elevations: Specially Builders' Supply - Drawing A-1.1", consisting of one 24" X 36" sheet showing south, north, east, and west elevations and first and second floor building plans on the site located at High Point Lane in Tisbury (Part of Map 22-A Lot 13.11). Prepared for Joseph DeBettencourt by Cape Building Systems, Inc., 13 Industrial Drive, Mattapoisett, MA 02739. Undated title block, but perimeter date 7/21/2015, 8:50:18 AM.
- P3 "Offers" consisting of one 8.5" by 11" sheet listing specific aspects of the plan that will be carried out in order to improve the project and mitigate any negative impacts signed by Joseph DeBettencourt on November 17, 2015.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector; August 12, 2015.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, and Bill Veno, Senior Planner, with the assistance of other staff members, September 11, 2015; revised September 25, 2015; revised October 14, 2015; revised November 5, 2015.

- E3. Photographs of the site, taken on October 15 by MVC staff member Paul Foley.
- E4. Letter from the Tisbury Planning Board.
- E5. Letter from the Tisbury Board of Selectmen.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, September 14, 2015.
- E7. Minutes of the Commission's Land Use Planning Committee meeting, September 28, 2015.
- E8. Minutes of the Commission's Public Hearing, October 15, 2015.
- E9. Minutes of the Commission's Continued Public Hearing, November 5, 2015.
- E10. Minutes of the Commission's LUPC Post Public Hearing Review, November 23, 2015.
- E11. Minutes of the Commission's Continued LUPC Post Public Hearing Review, November 30, 2015.
- E12. Minutes of the Commission Meeting of December 3, 2015 – Deliberations and Decision.
- E13. Minutes of the Commission Meeting of January 7, 2016 – Approval of the Written Decision.

2.5 Summary of Testimony

The following identifies the parties that provided principal testimony during the public hearing.

- Presentation of the project by Joseph DeBettencourt (Applicant); and John Folino (Builder).
- Staff reports by Paul Foley, MVC DRI Coordinator; Sheri Caseau, MVC Water Resource Planner; and Priscilla Leclerc, MVC Traffic Planner.
- Oral testimony from Public on October 15, 2015: Tom Pachico (property owner); Danny Rogers; and Peter Goodale.
- Oral testimony from Public on November 5, 2015: Dan Seidman (Tisbury Planning Board Chairman); Tom Pachico (property owner); and Mary Gosselin (Abutter).

3. FINDINGS

3.1 Project Description

- The proposal is to construct a 5,166 gsf (4,500 sf footprint) vehicle repair garage with four repair bays able to accommodate trucks, a vehicle inspection station, offices, waiting area, and storage.
- The project is proposed to be located in Tisbury, accessed off High Point Lane. Surrounding land uses include a proposed wholesale lumber facility, a former landfill, a park and ride and certain Town of Tisbury offices.
- The applicant specializes in mechanical repair of large trucks.
- The proposal involves major topographical alteration to prepare a slightly larger than half-acre site on a hill that drops 30 feet to be re-graded and supported with retaining walls on all sides at or near the property lines to maximize applicant's use of his property, which results in alteration of abutting land and vegetation.
- The applicant has the Town's permission to lower the grade of Town-owned land between his project and the Town Annex parking and to locate the wall along the common boundary line, which would allow the applicant to reduce the height and cost of the retaining wall.

- The Board of Selectmen issued a letter for the first public hearing indicating they had no issue with the proposed work on town property pending input from the Building Inspector, Planning Board and MVC. The Town would give permission for the applicant to grade and restore and landscape the area. Details of the Memorandum of Understanding among the town parties had not been received before the close of the written record.

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 light industrial proposal is an allowable use in this commercially zoned area. The Commission finds that the site, which may not be ideal, is being re-engineered to accommodate the proposed development, and notes the lack of available industrially zoned land on the island.

A2 The Commission finds that the proposed development would have a mixed 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 Applicant will install and use an advanced de-nitrification system to meet the Commission’s nitrogen loading threshold for the Lake Tashmoo watershed and conditions are in place to require connection to the Town’s sewer system after 10 years, if available. The Commission notes that the nitrogen loading budget for this project was based on the water records of similar nearby uses rather than Massachusetts Sewage Design Flow standards for a garage with 4 bays. The Commission finds that the Stormwater for a 25-year storm is conditioned to be retained on site.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposed site, while in a commercial neighborhood, will be completely stripped of vegetation and regraded to require retaining walls on four sides.

With respect to Night Lighting and Noise, the Commission finds that the applicant's development will be neutral and not unreasonably increase the lighting or noise in this commercial setting.

With respect to Energy and Sustainability, the Commission finds that the project has not proposed any special measures to promote energy conservation or sustainability beyond what is required by the building code.

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

With respect to Traffic and Transportation, the Commission finds that the traffic report indicated that the project would have a minimal impact on trip generation and that the number of parking spaces is adequate. The Commission notes that the site is on a bus route and close to the Town Park and Ride.

With respect to Scenic Values, Character, and Identity, the Commission notes that the proposed structure and site plan is not out of character with much of the light industrial development found throughout the commercially zoned area but finds that the project will be a detriment to character and identity due to the extensive removal of mature trees and regrading that extends beyond the Applicant's site. The Commission notes that the proposal does not meet the MVC Landscaping Policy.

With respect to the Impact on Abutters, the Commission finds that there will be impacts to abutters in that the proposal includes retaining walls on all four sides at or near the property line. The Commission notes that the Applicant must develop a Memorandum of Agreement with the Town of Tisbury for the work to be done on their border and, possibly, similar agreements with the other 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).

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). The Commission further found that the project might generate additional 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 such as those relating to wastewater, the Commission has concluded that the probable benefits of this proposed development in this location exceed its 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, 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 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.

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.

This site is not within any DCPC.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on December 3, 2015, 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 3, 2015.

- Voting in favor: John Breckenridge; Christina Brown; Fred Hancock; Lenny Jason; James Joyce; Kathy Newman; Ernie Thomas; and James Vercruysse.
- Voting against: Joan Malkin.
- 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 3, 2015, and was approved by vote of the Commission on January 7, 2016.

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 Landscaping:

- 1.1 As offered by the Applicant, a final landscaping plan based on the MVC's DRI policy on Site Design and Landscape showing plant species, size and locations, and implementation timetable shall be submitted for the review and approval of the LUPC before the issuance of a Certificate of Occupancy. The landscaping plan shall include plans for vegetated buffers, street trees, screening along High Point Lane, and visual softening of the faces of retaining walls visible from public ways.
- 1.2 As offered by the Applicant, a 6-foot high chain link fence shall be installed atop the upper retaining wall extending along the common boundary with the Town of Tisbury and parallel to High Point Lane. A 4-foot high fence shall be installed atop the entire length of the lower retaining wall.
- 1.3 The concrete retaining wall on all sides shall display a cut stone appearance to provide a natural appearance and the materials shall be reviewed and approved by LUPC and must be similar to those submitted by the applicant before the written record closed.
- 1.4 There shall be a retaining wall topped with a fence on the boundary with Shirley's Hardware. If the retaining wall is eliminated because the applicant and Shirley's Hardware come to a different agreement to meet the grade then the applicant shall come back to LUPC for review and approval.
- 1.5 The applicant shall show evidence that he has permission to maintain vegetation on town property.
- 1.6 The landscape plan shall be completed within nine (9) months of the Certificate of Occupancy and shall be maintained in perpetuity.
- 1.7 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, a final lighting plan based on the following principles shall be submitted for the review and approval of the LUPC before obtaining a building permit.
 - 2.1.1 All exterior lighting shall be downward shielded to prevent direct light from escaping the property.
 - 2.1.2 Exterior lighting on buildings shall be limited to that required by code and be on timers to ensure that they are turned off during the day as well as turned off during the night when the building is not occupied.
 - 2.1.3 Lighting on signs shall be shielded to prevent glare for drivers. Signs on buildings shall not be illuminated.
 - 2.1.4 Security lighting, if any, shall be on motion detectors.

3 Affordable Housing:

- 3.1 As offered by the Applicant, the Applicant shall make a \$3,166 payment to an island affordable housing organization prior to obtaining a Certificate of Occupancy.

4 Stormwater / Spill Containment:

- 4.1 As offered by the Applicant, a final stormwater management plan shall be submitted for the review and approval of the LUPC before site excavation begins.
- 4.2 The final stormwater management plan shall include a raised vegetative berm to control runoff unless an engineer determines otherwise.
- 4.3 As offered by the Applicant, stormwater systems shall be designed to handle on site at least a 25-year storm event.
- 4.4 As offered by the Applicant, floor drains in the building shall have oil-water separators and be drained to a tight tank for collection and removal.
- 4.5 All lubricants and fluids shall be used inside the building and shall be contained. Lubricants and fluids shall only be allowed outside if stormwater catch basins are fitted with ABTech's Ultra-Urban filters model DI2020N or equivalent. An Operations and Management service contract for the catch basins shall be secured by the Applicant and submitted to the MVC. The stormwater collection system shall be visually inspected on a quarterly cycle, maintained as needed, and reports submitted to the Town and MVC.
- 4.6 As offered by the Applicant, the vehicular access shall be sloped away from High Point Lane to prevent runoff onto the public roadway and comprised of a surface to prevent tracking dust, stones, etc. onto the public roadway.

5 Wastewater:

- 5.1 As offered by the Applicant, the Applicant shall employ an advanced treatment de-nitrification system that will keep nitrogen from the septic system at or below 19 mg per liter, enabling the nitrogen load for the property not to exceed 3.14 kilograms per year.
- 5.1.1 Once the system produces satisfactory test results meeting the above limit for four consecutive quarters, the system shall be required to be tested only annually, but with quarterly inspections.
- 5.1.2 All reports on testing of wastewater shall be filed annually for the life of the facility with the MVC and the Tisbury Board of Health.
- 5.2 If the tests exceed 19 mg/l nitrogen for four consecutive quarters, the Applicant shall connect to the sewer system if available, pay a mitigation fee if in effect, or utilize an alternative treatment method to be approved by the Commission.
- 5.3 The applicant shall hook up to the Town sewer system within ten (10) years of his Certificate of Occupancy if the sewer system is available to him.

6 Environment:

- 6.1 As offered by the Applicant, used oil will be stored in a UL listed waste oil tank and recycled in-house as fuel for a waste oil furnace.

7 Energy:

- 7.1 As offered by the Applicant, the use of a standing seam metal roof and placement of the electric panel at the rear of the building will facilitate any future installation of solar panels.

8 Hours of Operation/Noise:

- 8.1 As offered by the Applicant, the hours of operation shall not start before 8:00 am or extend beyond 6:00 pm Monday through Saturday, except in an emergency.
- 8.2 As offered by the Applicant, all mechanicals, HVAC, and exhaust fans shall be located on the side of the building – not on the roof – to minimize the impact on the neighbors and view from the public way.

9 Alterations

- 9.1 As offered by the Applicant, once the MVC approves a Written Decision for the Applicant's proposal, any subsequent requests by the Applicant to substantially alter the building, site or the use of the premises as specified in said Written Decision shall be submitted to the Martha's Vineyard Commission for approval.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of 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 the following permits 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 respective conditions in this Decision has been satisfied:

Excavation permit	- Condition 4.1
Building permit	- Condition 3.1
Certificate of Occupancy	- Condition 1.1 and 2.1

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 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

James Vercruysse
James Vercruysse, Chairman

Jan. 21 2016
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 21st day of January, 2016, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared James Vercruysse, 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

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 25, 2016

Deed – Book _____, page
DECIS- 1396- 1018

Attest: Dianne E. Powers Register