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Decision of the Martha's Vineyard Commission

DRI 663 – Phillips Hardware Mixed Use

1. SUMMARY

- Referring Board: Oak Bluffs Planning Board, Town of Oak Bluffs, MA
- Subject: Development of Regional Impact #663
- Project: Replace a 1-3 story retail building at the center of the downtown business district with a new 3-story mixed-use building with double the square footage.
- Owner: Phillips Realty Trust; Donna P. Leon and Susan P. Phillips, Trustees
- Applicant: Donna Leon and Susan Phillips
- Applicant Address: 157 Pennsylvania Avenue, Oak Bluffs, MA 02557
- Project Location: 30 Circuit Avenue, Oak Bluffs, MA Map 8 Lot 272 (5,990 sf / 0.1375 acre)
- Description: Demolish an existing 1-3 story retail building at the center of the downtown's Circuit Avenue and reconstruct a 3-story building in the historical style of the original – the 1880 Oakwood Hotel, returning residential/hotel use to the upper floors. Total square footage of the building, with basement, changes from the existing 8,750 sf to 17,844 sf.
- 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 3, 2016.
- Written Decision: This written decision was approved by a vote of the Commission on December 15, 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 August 25, 2016 by the Oak Bluffs Planning Board 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 Mixed-Use over 3,000 sf); 3.4 (Demolition in a Commercial District); 8.2ii (Demolition of Building over 100 years) which requires a mandatory review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the application was published in the Martha's Vineyard Times, September 8, 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 September 22, 2016, which was continued to October 6, 2016, at which no testimony was taken and continued again, at the applicant's request, to October 20, 2016, when the hearing was closed.

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. "Project Narrative" consisting of one 8.5" by 11" sheet dated September 15, 2016; unattributed.
- P2. Three-sheet set of plans by Sullivan + Associates titled "Phillips Hardware" comprised of Sheet A-01 Site Plan and Locus; Sheet A-02 Floor Plans; and Sheet A-03 Exterior Elevations, dated September 22, 2016.
- P3. One sheet untitled elevation plan of existing structure at 30 Circuit Avenue viewed from the street; undated, unattributed.
- P4. Two sets of photographs showing the street view from several hundred feet on both sides of the existing and proposed [Photo shopped] buildings; undated, unattributed.
- P5. Two-sheet set of plans by Sullivan + Associates titled "Phillips Hardware" comprised of Sheet A-01 Site Plan Phase 1 [demolition] and Sheet A-02 Site Plan Phase 2 [construction], dated October 5, 2016.
- P6. "DRI 663 Phillips, MVC Offer Sheet" listing specific measures the Applicant will take to improve the project and mitigate any negative impacts signed by Susan Phillips and Donna Leon on November 2, 2016

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Planning Board; July 20, 2016
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, August 29, 2016; revised September 22, 2016.
- E3. Staff PowerPoint including photographs of the site by Paul Foley, MVC DRI Coordinator; dated October 19, 2016.
- E4. Letter from Luke F. DeBettencourt re abutting Reliable property, September 8, 2016
- E5. Letter from Donald B. Corner, September 19, 2016
- E6. Letter from Richard Toole, September 20, 2016
- E7. Letter from Luke F. DeBettencourt re abutting Reliable property, September 29, 2016
- E8. Letter from Renee Balter, October 5, 2016
- E9. Minutes of the Commission's Land Use Planning Committee meeting, August 29, 2016
- E10. Minutes of the Commission's Public Hearing, September 22, 2016
- E11. Minutes of the Commission's Continued Public Hearing, October 6, 2016
- E12. Minutes of the Commission's Continued Public Hearing, October 20, 2016
- E13. Minutes of the Commission's LUPC Post Public Hearing Review, October 24, 2016
- E14. Minutes of the Commission Meeting of November 3, 2016 – Deliberations and Decision
- E15. Minutes of the Commission Meeting of December 15, 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.

- Presentation of the project by Chuck Sullivan (Architect) and Donna Leon (Applicant)
- Staff reports by Paul Foley, MVC DRI Coordinator, and Adam Turner, Executive Director
- Oral testimony from Public on September 22, 2016: Larry Hardoon and Amy Billings
- Oral testimony from Public on October 20, 2016: Richard Toole

3. FINDINGS

3.1 Project Description

- The proposal is to demolish an existing 1-3 story retail building at the center of the downtown's Circuit Avenue and reconstruct a 3-story building in the historical style of the original – the 1880 Oakwood Hotel, returning residential/hotel use to the upper floors. Total square footage, including a basement, changes from the existing 8,750 sf to 17,844 sf.
- The existing building has a footprint of 5,148 sf with two retail units, mostly occupied by Phillips Hardware which has been in this location since 1928. The new building will have a smaller footprint of 4,923 sf to provide better accessibility for the upper stories.
- The existing 289 sf basement will be replaced with a full basement accessed from the rear exterior of the property.

- The two upper floors will have eight hotel units accessed by a small lobby with stairs and an elevator off of the existing alley (to be widened). A second stairway will be on the opposite side of the building accessed from Circuit Avenue.
- The applicant initially wanted to make the upper stories workforce apartments but is not able to do so because of the town's zoning. The applicant intends to pursue amending the zoning to allow the apartments, but in order to not hold up construction of the building, proposes an eight (8) unit transient hotel that conforms to existing zoning.
- The construction is planned in two phases. The first is to demolish the building and complete the basement, first floor, and shell of the upper floor over an off-season. The second phase is to complete the rooms on the upper floors.

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.

3.3 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 return the property to a multi-storied, mixed-use, infill, "Smart Growth" project located in the town's downtown business district.

A2 The Commission finds that the proposed development would have a beneficial 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 property is already connected to the town sewer, as will be the expanded project. The site's surface is already entirely impervious and the project is proposed to connect to the town stormwater drain.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project widens and makes more accommodating alley on the left (north) side of the building leading between Circuit Avenue and the Reliable parking lot.

With respect to Night Lighting and Noise, the Commission finds that the project's lighting will be premised on limiting exterior lighting to that required by code and safety in the alley, with all lighting to be downward shielded and security lighting on motion detectors. The project's mechanical equipment will be within the roofline of the building and out of view from public ways, or enclosed to minimize noise impacts on others.

With respect to Energy and Sustainability, the Commission finds that the project will be constructed to exceed the requirements of the Massachusetts Building Stretch Code.

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

With respect to Traffic and Transportation, the Commission finds that the project will not provide on-site parking for customers, workers or occupants, but acknowledges the Oak Bluffs' program to address parking on a broader scale by assessing mitigation fees in lieu of requiring parking. Pedestrian movement will be improved by the project reconfiguring the first floor levels along the length of the building to meet ADA accessibility standards.

With respect to Scenic Values, Character, and Identity, the Commission finds that the project will return the character and identity of its site to the Victorian-flavored architecture and multi-floored, mixed-use buildings that lined downtown Circuit Avenue a century ago. The scale and architecture will complement that of the historic-registered structure directly opposite on Circuit Avenue.

With respect to the Impact on Abutters, the Commission finds that the new building will enhance the streetscape façade and provide a safer neighboring structure. Surrounding businesses will be temporarily impacted during demolition and construction, but these will be minimized by working out with the town the construction staging and phasing.

A4 The Commission finds that the proposed development will have a beneficial – though as yet not completely specified – 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's proposed hotel accommodations for the upper floors are not what the applicant prefers and the applicant is working with the Town to permit residential units. In either case, the applicant has offered to meet the Commission's affordable housing policy prior to receiving a Certificate of Occupancy for the upper floors.

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

The project will be tied to town water and sewer. The potential impacts to municipal services such as police and fire are likely to be minimal since the proposed project is located within a densely developed commercial/residential area. The impact on fire services should be positive in that an older building will be replaced by new construction compliant with new fire safety code. No impact on school enrollments is anticipated. The proposal will increase property values and tax revenues.

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).

The project adds diversity of uses and increases the intensity of action in the downtown area, where public infrastructure is most efficiently provided. The Town is presently examining the adequacy of its downtown sidewalks.

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 that the project The reintroduction of mixed use to the town's primary business area and attention to historic architectural character are consistent with the objectives in the Oak Bluffs Master Plan and Oak Bluffs Downtown Streetscape Master Plan. The project should enhance economic activity for all.

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).

The Commission finds that the project advances the objectives and policies of the MVC's Island Plan, and the Massachusetts Smart Growth Principles.

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

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

The Commission finds that the project conforms to the Town's B-1 Business District regulations.

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 the project does not lie within any DCPC.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on November 3, 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 November 3, 2016.

- Voting in favor: Trip Barnes; John Breckenridge; Robert Doyle; Josh Goldstein; Fred Hancock; Joan Malkin; Kathy Newman; Doug Sederholm; Linda Sibley; Ernie Thomas and James Vercruysse.
- 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 November 3, 2016 and was approved by vote of the Commission on December 15, 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 Towns attorney's fees and costs incurred in obtaining judicial relief.

1. Exterior Lighting

- 1.1. A final lighting plan shall be submitted to and is subject to the approval of LUPC before construction begins. It will be based on the following principles: Exterior lighting on buildings shall be limited to that required by code; some additional security lighting may be needed for the alleyway entrance to the upper floors; any security lighting will be motion sensitive; and all exterior lighting shall be downward shielded.

2. Affordable Housing

- 2.1. The applicant shall come back to the MVC with a final proposal for addressing the affordable housing component and a final plan shall be submitted. This shall be subject to the approval by the MVC prior to a Certificate of Occupancy being issued for the upper floors.

3. Wastewater & Storm Water

- 3.1. As offered by the Applicant, the Applicant shall hook up to the Town of Oak Bluffs wastewater treatment system.
- 3.2. As offered by the Applicant, a final storm water management plan shall be submitted for the review and approval of the LUPC before site excavation begins. The proposal is to connect directly to the town storm water drain.

4. Alterations

- 4.1. As offered by the Applicant, there shall be no substantive alterations of the project's approved use or design without the approval of the Martha's Vineyard Commission.

5. Noise:

- 5.1. As offered by the Applicant, all mechanicals, HVAC, and exhaust fans will be located within the roofline and not visible from any public ways, or in an enclosed area to minimize the impact on neighbors.

6. Construction Phasing Plans

- 6.1. As offered by the Applicant, the Applicant shall prepare and submit to the Town Board of Selectmen (or such offices as they may designate) for approval a demolition and construction schedule and plan, designed to minimize disruption of day-to-day activities in the area.

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 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 for this development until he 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:

- No permit that would enable site excavation to begin until Condition 3.2 is satisfied.
- No building permit until Condition 1.1 is satisfied.
- No Certificate of Occupancy for second and third floors until Condition 2.1 is satisfied.

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

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.

6.4 Signature Block

James Vercruysse
James Vercruysse, Chairman

12.21.16
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County

On this 21st day of December, 2016, before me,
Donna-Lee Stewart, the undersigned Notary Public, personally
appeared James Vercruysse, proved to me through satisfactory evidence of identity,
which was/were Drivers 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 February 24, 2023

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: December 30, 2016

Deed - Book _____, page _____

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