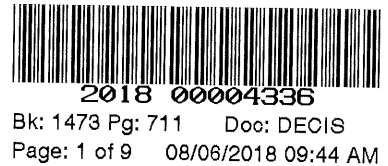


P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557  
508.693.3453 • FAX: 508.693 7894  
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG



## Decision of the Martha's Vineyard Commission

### DRI 683 – Division Road ANR

#### 1. SUMMARY

---

Referring Board: *Planning Board*, Town of Edgartown, MA

Subject: Development of Regional Impact # 683  
Division Road ANR

Project: Creation of five lots through a Form A (Approval Not Required) application

Owner: Boston Equity RE, LLC

Applicant: Boston Equity RE, LLC

Applicant Address: P.O. Box 520370, Salt Lake City, UT 84152

Project Location: Division Road (aka Henry's Path), Edgartown (recent 8.5 acre division of Map 37 Lot 46 – 25.75 acres; a portion of 119 Meetinghouse Way).

Description: Division of an 8.5-acre parcel into five lots through a Form A (Approval Not Required) application. The five lots range from 1.34 to 1.91 acres. They are served by a common entrance off Division Road—also known as Henry's Way—a private way to which the public has access rights. Division Road connects to Meshacket Road and Meetinghouse Road.

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 June 21, 2018.

Written Decision: This written decision was approved by a vote of the Commission on July 12, 2018.

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 referral from the Edgartown Planning Board dated March 8, 2018 was received by the Commission April 2, 2018 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 2.6 (ANR of 3 lots or more). Section 2.6 is a mandatory referral but with concurrence by the Commission. On May 14, 2018 LUPC recommended concurrence and hear the project as a DRI. The Commission voted May 24, 2018 to concur with the referral and to treat the project as a DRI.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the M.V. Times on May 31, 2018.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission on June 14, 2018 pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831.

### **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 "Plan of Land in Edgartown, Mass. Prepared for Boston Equity RE LLC," consisting of one 11" x 17" sheet showing the proposed subdivision of 8.5 acres, Scale 1 inch = 100 feet, prepared by Schofield, Barbini & Hoehn, Inc. 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. MV 9969. May 23, 2018.
- P2 "Declaration of Restrictive Covenants and Agreement for Dormant Access Easement" consisting of five (5) pages, signed by Doug Hoehn, agent for Boston Equity RE LLC, June 21, 2018
- P3 "Offer from Boston Equity pertaining to DRI 683 Division Road ANR" consisting of one (1) page, signed by Doug Hoehn, agent for Boston Equity RE LLC, June 21, 2018.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Edgartown Planning Board received on April 2, 2018.
- E2. Quitclaim Deed for the sale of the property to Boston Equity RE LLC. Recorded at the Registry of Deeds Book 1461, Pages 391-393.

- E3. Access and Utility Easement to allow utility installation across property owned by MV Estates from Meshacket Road to the property. Recorded at the Registry of Deeds Book 1461, Pages 424-431A.
- E4. Easement, Declaration of Restrictive Covenants and Rights of First Refusal. Recorded at the Registry of Deeds Book 1112, Page 93-98.
- E5. "Plan of Land in Edgartown, Mass. Prepared for Boston Equity RE LLC," consisting of one 8.5" x 11" sheet showing the proposed subdivision of 8.5 acres and the boundaries of the existing field, Scale 1 inch = 100 feet, prepared by Schofield, Barbini & Hoehn, Inc. 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. MV 9969. May 23, 2018.
- E6. Minutes of the Town of Edgartown Board of Waste Water Commissioners dated August 28, 2014; July 16, 2015; February 18, 2016; and February 15, 2018.
- E7. Email from Kim Rogers (Edgartown Water Department) to Doug Hoehn dated May 16, 2018.
- E8. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Dated May 14, 2018; revised May 21, 2018; revised May 24, 2018; revised June 12, 2018.
- E9. MVC Staff Memo dated June 21, 2018 re: possible benefits and detriments.
- E10. Letter from Richard Brown dated April 11, 2018.
- E11. Letter from Howard Miller in response to Richard Brown dated April 19, 2018.
- E12. Letter from Elisabeth and David Elden dated May 5, 2018.
- E13. Letters from Richard Brown dated May 23, 2018 and June 18, 2018.
- E14. Letter from Suzanne Crowell dated May 24, 2018.
- E15. Letter from the Martha's Vineyard Land Bank Commission dated June 8, 2018.
- E16. Letter from Jeffrey and Francine Agnoli dated June 15, 2018.
- E17. Minutes of the Commission's Land Use Planning Committee meetings, May 14, 2018 and May 21, 2018 and June 18, 2018.
- E18. Minutes of the Commission Meeting to determine concurrence, May 24, 2018.
- E19. Minutes of the Commission's Public Hearing, June 14, 2018.
- E20. Minutes of the Commission's Deliberations and Decision, June 21, 2018.
- E21. Minutes of the Commission's Approval of the Written Decision, July 12, 2018.

## **2.5 Summary of Testimony**

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

- Presentation of the project by Doug Hoehn, Surveyor and Agent for the Applicant.
- Oral testimony from the Public: Richard Brown and Jeffrey Agnoli.

## **3. FINDINGS**

---

### **3.1 Project Description**

Creation of five lots through a Form A (Approval Not Required) application for an 8.5 acre parcel. The five lots range from 1.34 to 1.91 acres. Town review of an ANR is limited to appropriateness of road access to the lots. Division Road, a.k.a. Henry's Way, is a private road which the public has right to use. When the Commission accepted the project for DRI review, the Applicant submitted revised plans with building envelopes and proposed covenants. The covenants include a prohibition against further subdivision; all construction, structures, landscaping and activities shall occur inside the Development Envelope of the lots; and include an easement for an 18' wide common driveway on Lots 2 and 3 within the area shown on the Plan as "Common Driveway Easement" to serve all 5 lots on the Plan. Applicant agent stated that each lot could have up to seven (7) bedrooms each.

### **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 CONSIDERING 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 this land is adjacent a large, small-lot subdivision, proximate to a higher density housing development planned by the Town of Edgartown, and adjacent another large tract pending development approval--all on community water and sewer.

**A2 The Commission finds that the proposed development would have a small detrimental 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 site is in a compromised watershed but that development will be served by municipal water and sewer.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project site is not within Natural Heritage protection zones but its characteristics suggest that 60% be protected for open space per the Commission's Open Space DRI Guidelines. Much of this designation, however, is based on the site being in a compromised watershed and a wellhead protection Zone II, which is substantially mitigated by the development being served by municipal water and sewer. Covenants will protect existing vegetation in buffers surrounding the development envelopes on each lot which, combined, account for about 58% of the project area. The open space is fragmented.

With respect to Night Lighting and Noise, the Commission finds that proposal should not have an unusual impact from other low-density residential development.

With respect to Energy and Sustainability, the Commission finds that the project has no effect.

**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 Scenic Values, Character, and Identity the Commission finds that some abutters have expressed concerns about this project in conjunction with two other, larger projects on the horizon—that these will completely change the neighborhood.

With respect to the Impact on Abutters, the Commission finds that approximately 40 to 80 feet of existing natural vegetation along the Island Grove neighbors will be retained as a buffer from new homes and yards. It is intended that a public trail run along the boundary with Island Grove, which some people may see as an enhancement to enjoy the area while others may view as a negative.

**A4 The Commission finds that the proposed development would have an undetermined impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).**

The Commission finds the proposal does not trigger the MVC's Affordable Housing Policy because the number of lots being created is fewer than ten. Because the project's 8.5 acres was previously divided in January 2018 from a 26-acre tract, the practice of the MVC is to allocate the five lots to any subsequent development of the "parent" lot.

**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 finds that the development will be on municipal water and sewer, a private road, and that it will add to the tax rolls of Edgartown.

**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, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment considering 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 MVC in December 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 notes that the proposal is subject to Special Permit review at the Town.

**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 proposed development is not located within any District of Critical Planning Concern (DCPC).

## **4. DECISION**

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on June 21, 2018 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:

- Voting in favor: Clarence A. "Trip" Barnes III, Leon Brathwaite, Christina Brown, Robert Doyle, Fred Hancock, James Joyce, Doug Sederholm, Linda Sibley, Ernest Thomas, Richard Toole and James Vercruysse.
- Voting against: none
- Abstentions: Ben Robinson

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 June 21, 2018 and was approved by vote of the Commission on July 12, 2018.

## **5. CONDITIONS**

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions 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 Restrictive Covenants:**

- 1.1 As offered by the Applicant, the applicant shall record with the Registry of Deeds, concurrently with the Plan, the Restrictive Covenants which include but are not limited to: a) prohibition on further subdivision that would increase the number of lots beyond five (5); b) prohibition on cutting of trees and brush in Vegetation Buffers, with provisions for augmenting existing vegetation with additional native species and for clearing specified paths; c) establishes provisions so that all five lots to share a single, common driveway off of Division Road.

**2 Public Trail Easement:**

- 2.1 As offered by the Applicant, a five (5) foot wide easement along the property line defined by Old Meshacket Road common to Lots 1, 2, and 3 for public trail use shall be granted to the Town of Edgartown or to a conservation organization with the stipulation that the grantee defend, indemnify, and save harmless the Applicant from liability that may stem from use of the trail. The grantee shall not be required to create or maintain the trail over the easement but may do so only upon such time as: a) similar public access is secured from landowners in the environs to form a continuous pathway that can be accessed by the public at both ends; b) the grantee notifies in writing the Applicant or then owner of record of Lots 1, 2, and 3 that all additional required access has been secured, said notice to be conveyed at least six (6) months prior to the grantee initiating any improvements.
- 2.2 As offered by the Applicant, the Applicant shall record the easement with the Registry of Deeds, concurrently with the recording of the Plan.

**3 Exterior Lighting:**

- 3.1 All exterior lighting shall be downward shielded to prevent direct light from escaping the property.

**4 Fertilizer and Pesticide Use:**

- 4.1 Landscaping shall use best management practices and will use slow release, water insoluble nitrogen source types of fertilizer and shall not use synthetic pesticides, including herbicides, fungicides and insecticides.

**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.


## **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 to record with the Dukes County Registry of Deeds the Plan, Covenants and Easement specified in this Decision. Failure to record these documents within said two (2) year period shall cause the Decision to become null and void and have no further effect. Prior to its expiration, 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**

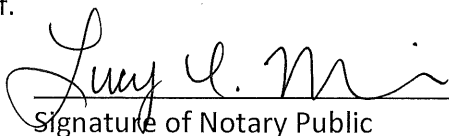
  
James Vercruysse, Chairman

July 26, 2018  
Date

## **6.4 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 26<sup>th</sup> day of July, 2018, before me,  
Lucy C. Morrison, the undersigned Notary Public, personally  
appeared James Vercruysse, proved to me through satisfactory evidence of  
identity, which was/were personal knowledge to be the person(s)  
whose name(s) was/were signed on the preceding or attached document in my presence, and who  
swore or affirmed to me that the contents of the document are truthful and accurate to the best of  
his/her/their knowledge and belief.

  
Signature of Notary Public

Lucy C. Morrison  
Printed Name of Notary  
My Commission Expires May 9, 2025



**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: August 6, 2018

Deed – Book 1473, page 711

Document Number: 00004336

ATTEST: Paulo C. DeOliveira, Register  
Dukes County Registry of Deeds