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Decision of the Martha's Vineyard Commission

DRI 749 33 Lagoon Pond Road Demolition

1. SUMMARY

Referring Board: Tisbury Planning Board

Subject: Development of Regional Impact #749 33 Lagoon Pond Road Demolition
(Previously C.R. 8-2023)

Project: Retroactive demolition of a structure older than 100 years to be replaced with a four-story structure in the flood zone.

Owner: Sawyer Realty Group, LLC

Applicant: Mike Sawyer; Jason Talerman (Attorney)

Applicant Address: Mike Sawyer
P.O. Box 1408
Vineyard Haven, MA 02568

Jason Talerman
Mead, Talerman & Costa LLC
730 Main Street, Suite 1F
Millis, MA 02054

Project Location: 33 Lagoon Pond Road, Vineyard Haven. Map 9-A, Lot 14 (approximately 0.129 acres).

Deed: Recorded: Book 1633, Page 443

Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact at a vote of the Commission on December 14, 2023.

Written Decision: This written decision was approved by a vote of the Commission on January 4, 2024.

The permit-granting authorities of the Town of Tisbury may now grant the request for approval of the Applicant's proposal in accordance with this decision and may place 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 Commission.

2. FACTS

The exhibits listed below including the referral, the application, the notice of the 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 7, 2023 by the Planning Board 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, DRI Checklist Items: 8.1b *Demolition of a structure older than 100 years*, which is a concurrence review. After the LUPC meeting on September 12, 2023, the Applicant opted for a public hearing review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on September 21 and 28, 2023; notice was also published in the Vineyard Gazette on September 22 and 29, 2023. Abutters within 300 feet of the property were notified by mail on September 19, 2023.

Hearings: The Commission held a duly noticed public hearing on the Application that was conducted pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on October 5, 2023, which was continued to November 16, 2023. The hearing was closed that night with the exception of the written record, which was left open until November 23, 2023 at 5:00 p.m. and closed at that time. The hearings were held in a hybrid format, with attendance in-person while also utilizing remote conference technology as allowable under Chapter 2 of the Acts of 2023.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." All pages are 8.5" x 11" unless otherwise noted.

- P1. Worksheet prepared for Sawyer, Parcel 9-A-14, prepared by Sourati Engineering Group LLC, consisting of one (1) 36" x 24" page, scale 1" = 10', dated January 31, 2023. Job No. 102689.
- P2. Floor Plans and Elevations prepared by Westchester Modular Homes, Inc., consisting of nine (9) 22" x 17" pages, dated May 16, 2023, including: 1 - 3D Renderings and Title Page; 2 - Front, Rear and Side Elevations, scale $\frac{3}{16}$ " = 1'-0"; 3 - Foundation Floor Plan, scale $\frac{1}{4}$ " = 1'-0"; 4 - First Floor Plans, scale $\frac{1}{4}$ " = 1'-0"; 5 - Second Floor Plans, scale $\frac{1}{4}$ " = 1'-0"; 6 - Third Floor Plans, scale $\frac{1}{4}$ " = 1'-0"; 7 - First Floor 3D Interior Rendering, no scale; 8 - Second Floor 3D Interior Rendering, no scale; 9 - Third Floor 3D Interior Rendering, no scale.

P3. Preliminary Site Plan in Tisbury, Massachusetts Assessor Parcel 9-A-14 prepared for Sawyer Realty Group LLC by Sourati Engineering Group LLC, consisting of one (1) 24" x 18" page, scale 1" = 10', dated May 18, 2023. Job No. 102689.

2.4 Other Exhibits

- E1. Referral to the Martha's Vineyard Commission from the Tisbury Planning Board, received August 7, 2023.
- E2. Order to Remove a Structure at 33 Lagoon Pond Road In Accordance with 780 CMR Sec. 116 & M.G.L. Ch. 143, Sec. 6 from Ross Seavey, Tisbury Building Commissioner, to Sawyer Realty Group, LLC, consisting of one (1) page, dated December 30, 2022.
- E3. Property Card for 33 Lagoon Pond Rd, consisting of one (1) page.
- E4. Project Narrative prepared by Mike Sawyer, consisting of three (3) pages, dated August 4, 2023.
- E5. Letter from the Tisbury Historical Commission regarding the historical context of the neighborhood and expressing concerns about the proposed replacement structure, consisting of one (1) page, dated August 16, 2023.
- E6. Staff Report for C.R. 8-2023 33 Lagoon Pond Road Demolition, consisting of two (2) pages, dated September 11, 2023.
- E7. Staff Presentation for C.R. 8-2023 33 Lagoon Pond Road Demolition to the Land Use Planning Committee, consisting of twenty-nine (29) pages, dated September 12, 2023.
- E8. Public Hearing Notice for DRI 749 33 Lagoon Pond Road Demolition, consisting of one (1) page, dated October 5, 2023.
- E9. Staff Presentation for DRI 749 33 Lagoon Pond Road Demolition to the Land Use Planning Committee, consisting of twenty-nine (29) pages, dated November 16, 2023; updated to consist of thirty-two (32) pages on December 14, 2023.
- E10. Nearmap aerial view of Lagoon Pond Road neighborhood with structures labeled with address, year built, use, architectural style, consisting of one (1) page, created by MVC staff on October 31, 2023.
- E11. Letter of support from Jessica Tartell, Chicken Alley Thrift Shop Director of Operations, dated October 4, 2023.
- E12. Letter of support from Dan Panico, direct abutter, dated October 4, 2023.
- E13. Letter expressing concerns regarding replacement structure from Gretchen Snyder dated October 7, 2023.
- E14. Letter from the Tisbury Planning Board requesting that the MVC consider remanding the proposal back to the Town, consisting of one (1) page, dated November 2, 2023.

- E15. Minutes of the Land Use Planning Committee’s Pre-Public Hearing Review, September 11, 2023.
- E16. Minutes of the Commission’s Public Hearing, October 5, 2023.
- E17. Minutes of the Commission’s Continued Public Hearing, November 16, 2023.
- E18. Minutes of the Land Use Planning Committee’s Post-Public Hearing Review, December 11, 2023.
- E19. Minutes of the Commission’s Deliberation & Decision, December 14, 2023.
- E20. Minutes of the Commission’s Approval of the Written Decision, January 4, 2024.

2.5 Summary of Testimony

The following gave testimony during the public hearing on October 5, 2023:

- Staff presentation by Rich Saltzberg, DRI Coordinator.
- Presentation of the project by Jay Talerman, Attorney and Mike Sawyer, Owner.
- Oral testimony from Public Officials: none.
- Oral testimony from the Public:
 - Mark Lovewell, direct abutter.

The following gave testimony during the continued public hearing on November 16, 2023:

- Staff presentation by Rich Saltzberg, DRI Coordinator.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: none.

3. FINDINGS

3.1 Project History

On December 30, 2022, the Tisbury Building Commissioner Ross Seavey issued a written order that the now prior dwelling be demolished based on its susceptibility to “catastrophic failure.” The building was subsequently demolished in 2023.

The property was referred to the Commission on August 7, 2023 by the Tisbury Planning Board as a concurrence review and included a plan for redevelopment/replacement of the parcel. After the LUPC meeting on September 12, 2023, the Applicant opted for review as a DRI with a public hearing.

The Commission then paused consideration of this demolition replacement to allow the Tisbury Planning Board time to consider this proposal.

On November 2, 2023, the Planning Board replied that the project is subject to Special Permit requirements and requested the Commission either remand the project or limit its review to the demolition and not the replacement dwelling.

3.2 Project Description

The demolition of a two-family dwelling built circa 1900 (already accomplished), construction of a four-story dwelling in the flood zone that contains two residential units with two bedrooms apiece and also contains two garage bays.

3.3 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 evaluation 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 testimony presented and reviewing all documents 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 of 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.

The Commission finds that the probable benefits of the project outweigh the probable detriments, as described below. With respect to impacts upon the environment (Section 15(b) of the Act) and impacts on the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act), the Commission finds the project would have a neutral effect. With respect to impacts upon persons and property (Section 15(c) of the Act) the Commission finds the project would have a beneficial effect. The Commission finds the project would not adversely affect the provision of municipal services or burden on taxpayers (Section 15(e) of the Act) and would not unduly burden existing public facilities. The Commission finds the project would generally align with local planning objectives.

A1. The Commission finds that the proposed development at this location is appropriate and essential in view of the available alternatives (Section 15(a) of the Act.)

Based upon the poor condition of the prior dwelling, the Tisbury Building Commissioner’s demolition order, and neighbors’ negative opinions about the prior dwelling, the Commission views the demolition of the former dwelling to be reasonable and acceptable. The Commission declines to opine

on the replacement structure. This demolition approval does not constitute an approval of the replacement building.

A2. The Commission finds that the proposed development would have a neutral impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Water quality (including groundwater), the Commission finds the project would have a neutral effect because the demolished dwelling was connected to municipal sewer and because the project retains that sewer connection.

With respect to Stormwater and Flooding, the Commission finds the project would have neutral effects because no habitable space is designed for the ground floor. The Commission also notes the following:

- The project site is within the 100-year flood zone.
- The ground floor of the project is composed of garage bays and has no habitable space per FEMA floodplain requirements.
- The project site is on a road that periodically floods and is near a major intersection that periodically floods.

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

With respect to Character and Identity, considered a primary factor in this decision, the Commission finds the project would have beneficial effects because the prior dwelling was believed to be a den of unlawful and unsanitary activity and constituted a source of unease in the neighborhood. Furthermore, the Commission finds the project would have a beneficial effect because while the neighborhood has historical importance, the dwelling—which was ordered to be demolished in writing by the Tisbury Building Commissioner due to its potential for catastrophic failure—had no particular historical or architectural importance, and because the dwelling was located in a neighborhood of buildings with varied erection dates and heterogenous styles. The Commission also notes the following:

- The razed dwelling was built Circa 1900. The Tisbury Historical Commission described the historical significance of the area as being rooted in “the structure and evolution of the neighborhood rather than the structures that comprise it. Specifically, the Tisbury Historical Commission found the proposed dwelling was not “sympathetic” to area buildings and should be redesigned to be more harmonious.
- Staff analysis revealed that the buildings in the area were an eclectic mix architecturally range between the early 20th Century and seventeen years into the 21st Century.
- The proposed dwelling is not an architectural replication of the razed building.

With respect to Economic Development, the Commission finds the project would have a beneficial impact because the former dwelling was believed to be bad for area business. The Commission also notes the following:

- Jessica Tartell, director of operations for abutting business Chicken Alley, a thrift shop, described the prior dwelling as a drag on commerce.

With respect to Social Development, the Commission finds the project would have a beneficial effect because the absence of the dwelling would elevate quality of life in the neighborhood. The Commission also notes the following:

- Based on the testimony of residential abutter Mark Lovewell, elements of crime, fear, and blight left the neighborhood when the dwelling was razed.

With respect to Impact on Abutters, the Commission finds the project would have a beneficial effect because it largely has neighborhood support. The Commission also notes the following:

- Residential abutters Dan Panico and Mark Lovewell endorsed the project. Jessica Tartell, director of operations for abutting business Chicken Alley, a thrift shop, endorsed the project.
- Residential abutter Gretchen Snyder agreed that "the house was at its end" but expressed concerns regarding the proposed replacement structure.

A4. In regard to 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 have a neutral impact.

With respect to Island Housing Needs, the Commission finds the residential use of the project is largely unrestricted.

A5. The Commission finds that the proposed development would have a neutral impact on the provision of municipal services and the burden on taxpayers in the making provision therefore (Section 15(e) of the Act).

With respect to Municipal services and taxpayers, the Commission notes the following:

- The Tisbury Fire Department fire tower would not have difficulty reaching the top of the proposed dwelling.
- The Tisbury Fire Department's high-water vehicle can traverse water up to 46 inches in depth and could potentially reach the proposed dwelling via a flooded roadway in the event of an emergency.
- If the replacement dwelling were rented on a short-term basis, short term rental tax would be applied.

A6. The Commission finds that the proposed development would use efficiently and would not unduly burden existing public facilities or those to be developed within the succeeding five years (Section 15 (f) of the Act).

The project will likely have a minimal impact on public facilities.

A7. The Commission finds that the project as proposed generally does not interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan, and would not contravene land development objectives and policies developed by regional or state agencies (Sections 14(b), 15(g), and 15(h) of the Act), respectively.

The project will likely not substantially aid or interfere with any general plans of the Town or the County or contravene land development objectives.

A8. The Commission finds that the proposed development is consistent with municipal ordinances and by-laws (Section 14(c) of the Act).

The project will be subject to Special Permit review by the Tisbury Planning Board. In a November 2, 2023 letter, the Planning Board requested the Commission either remand the project or limit its review to the demolition and not the replacement dwelling.

- 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.**
- 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.**

The project is not located in a DCPC.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, 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 15 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 14, 2023 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearings and deliberations, participated in the decision on December 14, 2023:

Voting to approve the project: Trip Barnes, Jay Grossman, Fred Hancock, Joan Malkin, Kate Putnam, Ben Robinson, Doug Sederholm, Brian Smith, Ernie Thomas, Peter Wharton

Voting against: None

Absent: Jeff Agnoli, Kathy Newman

Ineligible to participate: Christina Brown, Greg Martino, Linda Sibley, Carole Vandal

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact.

This Written Decision is consistent with the vote of the Commission on December 14, 2023 and was approved by a vote of the Commission on January 4, 2024.

5. CONCLUSION

5.1 Permitting from the Town

The Applicants 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 this decision and may place 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 Commission.

5.2 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.

5.3 Length of Validity of Decision

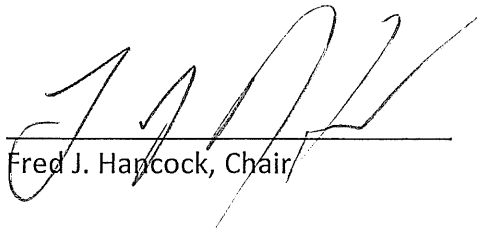
The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to receive a building permit for the replacement structure.

5.4 Sunset of DRI

DRI 749 shall lapse on the day that the building permit is issued for a replacement structure.

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5.5 Signature Block


Fred J. Hancock, Chair

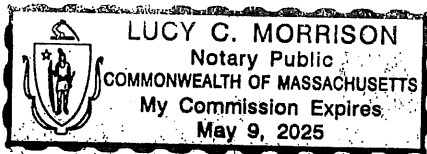
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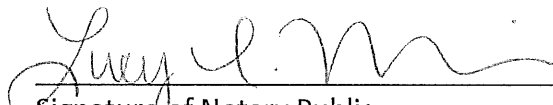
5.6 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 4th day of January, 2024, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Fred J. Hancock, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that he signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.




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

5.7 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 16, 2024

Deed: Book 1672, Page 612

Document Number: 2024-218