

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557

DATE: January 21, 1988
TO: Zoning Board of Appeals, Town of Edgartown
FROM: Martha's Vineyard Commission
SUBJECT: Development of Regional Impact
RE: Change of Use from Residential to Commercial
APPLICANT: Peter Zeytoonjian
Martin V. Tomassian, Jr., Agent
Main Street - P.O. Box 355
Edgartown, MA 02539

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission hereby denies permission for the development contained in the application of Peter Zeytoonjian, Martin V. Tomassian, Jr., Agent, Main Street, P.O. Box 355, Edgartown, MA 02539 for the change of use of an existing residential structure to commercial (retail) use as shown on the plans entitled: "30 South Water St., Site Plan, First Floor, Second Floor, by Terrain, 44 Main Street, Edgartown, Ma., Dated July 30, 1987, Revised October 31, 1987" Consisting of five (5) sheets; "Purchase and Sale Agreement, Dated July 3, 1987 between P. Zeytoonjian, A.F. Morey, A.R. Morey and E. Morey "Consisting of fifteen (15) sheets, making a total of twenty (20) sheets, (the Plan).

The Zoning Board of Appeals of the Town of Edgartown shall not grant the appropriate development permits.

The Decision is rendered pursuant to the vote of the Commission on January 21, 1988.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact Section 3.301. The application was referred to the Commission by the Zoning Board of Appeals of the Town of Edgartown for

action pursuant to Chapter 831 Acts of 1977 as amended (the Act). The Application and Notice of public hearing relative thereto are incorporated herein. Martha's Vineyard Commission staff document exhibits are incorporated by reference.

A duly noticed public hearing on the application was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2 as modified by Chapter 831 on November 12, 1987 at 8:00 P.M.

Mr. Evans, Chairman of the Land Use Planning Committee, read the public hearing notice at 8:05 P.M. and asked for the MVC Staff review.

Ann Skiver, MVC Planner, showed the location of the proposed building on an air photo, site plan and the Assessor's Map which depicted surrounding land uses. Ms. Skiver referenced a handout and stated that the reason for DRI review of this project is the change of use from residential to commercial is greater than 1,000 square feet and that the applicant proposes to change use of existing 3,735 sq. ft. Morey residence to commercial (retail) use and stated that the existing Morey residence 1st floor consists of 2,102 sq.ft. and the 2nd floor consists 1,633 sq.ft. making a total of 3,735 sq. ft. and the applicant proposes no structural or facade change. She stated the location of the proposal is in the Town of Edgartown, Assessor's Map 20D Lot 185 and that the Lot Area = 7,940 sq. ft. or .18 acre) on South Water Street. Further she stated that the existing access/egress is onto South Water Street, located in the B-1 District where the minimum lot size is 5,000 sq.ft. with front setbacks at 10' and side & rear yard setback minimum at 5 ft.. She stated that the proposal is also located within the Edgartown Historic District.

Ms. Skiver stated that the Applicant has applied for special permit from Zoning Board of Appeals under Section 9.2a of Edgartown Zoning By-laws which reads: Conditionally Permitted uses by Special Permit from the Board of Appeals. a. Business use of more than 1,500 square feet floor area not in such use January 1, 1984, whether through new construction, addition, or conversion to business from residential use.

Ms. Skiver then showed a video, submitted by the applicant's representative, of the proposal's landscaping, neighborhood and interior as it now exists.

Ms. Skiver then reviewed the parking requirements for such a proposal Per Edgartown Zoning By-laws for B-1 District: retail sales or service

establishments requires 1 space/500 sq.ft. equalling 8 spaces required for this proposal. She stated that in lieu of these spaces the Applicant proposes to pay \$400.00 per space per year to Town off-site provision fund under Zoning By-law 9.4h: (Requirements may be met through off-site provisions). She then noted that 2-3 parking spaces exist on property driveway and will be utilized for future employee parking. Further, using Phil Herr estimates the impact of approximately 3,733 sq. ft. retail space range from 224 to 486 vehicular trips per day making average vehicular trips per day 347.

Addressing wastewater generation she stated that the existing residence and proposed retail space will utilize Town sewerage facilities. She stated sewage flow estimates (Based on Title V):

Existing residential use - 10 bedrooms x 110 gal/day = 1,100 gal/day and the proposed retail use - 5 gal/day x 100 sq. ft. = approx. 187 gal/day. Ms. Skiver stated that the water supply will be town water.

Ms. Skiver then stated that a letter of correspondence to the Members of Land Use Planning Committee, has been received by Benjamin Hall, Jr. Representing the Vietor, Sheehan and Oliver families who are summer residents and live directly across from Morey residence. Stating the families are opposed to use of Morey property for retail use as this would change character of neighborhood. Also concerned with increase in pedestrian traffic causing traffic hazard. Families are in favor of a change in use for professional offices only.

Ms. Skiver then addressed possible development concerns as follows: Increase in pedestrian traffic impact on neighborhood; adequacy of employee parking; future utilization of backyard area and types of retail operation.

Mr. Evans asked if the Commissioners had any questions.

Mr. Filley asked if there is an existing sidewalk. Ann Skiver stated that there is a sidewalk with no breaks existing on the Applicants side.

Mr. Evans then asked the applicant's representative to give his presentation.

Martin Tomassian, Representative, stated that he would address issues which have been brought up through the staff presentation. He stated that the parking fee of \$400. per year per space would be paid regardless of the Town appropriating the monies or not. He stated the purpose of paying the fee instead of making available parking on-site is to keep the backyard as

is. Further he stated that the backyard could be made into a parking area in the future if this is what the Town would like. Mr. Tomassian stated that the applicant at this point does not own the property however, there is a purchase and sales agreement contingent on the change of use to retail. Mr. Tomassian then stated that the actual gross square footage on the first floor is 2,102 sq.ft. and the second floor has 1,633 sq.ft. and further that the actual available square footage is 1,673 and 1,067 respectively based on Susan Metzger's, Architect, diagram of the property.

Mr. Tomassian stated that the proposal is within the B-1 District and has a right to be used for commercial purposes such as the retail space and stated that the Victor property across the street is also within the B-1 District. Mr. Tomassian stated that there are businesses on both sides of the street and behind the structure are also businesses.

Mrs. Custer asked how many retail shops are being proposed. Mr. Tomassian stated that the applicant does not want to cut up too much and at the most one store will be on each floor further, that the applicant would like to see just one store in the entire structure.

Mr. Wey asked if there are any renovations proposed for the structure. Mr. Tomassian answered in the negative with the exception of one light and one sign and further that the Historic Commission is invited to work with the applicants on any future work to the building (i.e. painting).

Mr. Widdiss asked if there have been any provisions for employee housing with this proposal. Mr. Tomassian answered in the negative.

There being no further questions from the Commission, Mr. Evans asked for testimony from Town Boards.

Ted Morgan, Edgartown Selectman, asked if this will be a year-round business or seasonal? Mr. Tomassian stated that the Applicant, owner of the building, would like to see a year-round business in the building however, this is not guaranteed. Mr. Morgan further went on to say that his point is there is a difference in the traffic generation of year round businesses and vehicular traffic and stated that he agreed that seasonal businesses generate pedestrian traffic. Further, that his primary concern is parking and suggested that the proposal accommodate on-site parking as there is no space to park in Town even at \$400. per year.

Mr. Evans then called for proponents of the project. There were none.

Mr. Evans called for testimony in opposition.

Benjamin L. Hall Jr., Attorney representing the Vietor, Sheehan and Oliver families, neighbors directly across the street from proposed structure, stated that his clients are very concerned with the proposed change of use to retail and stated that his clients would have no problem with a change of use to professional buildings. He noted concerns of his clients are the noise associated with retail business, the increase in pedestrian and vehicular traffic and noted that there is a natural break of the Commercial District at the Pagoda Tree noting that the sidewalk ends at this point and the road/parking narrows at this point. He discussed existing congestion of bicycles, vehicles and sightseeing pedestrians and lastly states that a precedent was set regarding the Rankin change of use to commercial office space.

Paul Ronan, owner of house at 55 South Water Street in the Residential District, states that he is opposed to the retail shops at this location and spoke of the Rankin Commercial Use to office space and the problems it has caused with parking. Further he spoke of the heavy pedestrian traffic of the area. Also to commercial use in this area he stated that at this time only Inns, hotels and one real estate office exist on this street and noted that retail businesses in this area have moved out. He further noted that several neighbors in the area were not aware of this proposal and stated he speaks for others regarding the opposition. Mr. Ronan stated that he feels that the backyard would be too small an area to allow parking and lastly stated that retail shops would not be appropriate at this location.

Gary Conover, Charlotte Inn, stated that his family has concerns for the physical appearance of the building and the parking problem including egress and access points. He spoke of the existing house and yard and asked that the exterior and landscaping not be changed as it would take away the character of the surrounding neighborhood. Lastly, he asked the Commission to take this into consideration.

Mr. Evans then called for general comments.

Judy Strimel, Representative for Martin Morey, owner of the structure, stated that this is an allowed use and the only reason it is before the MVC is because it is a change of use over 1,000 square feet. She further stated that she feels professional use would create more vehicular traffic than does retail space and that in terms of parking the Town encourages

pedestrian traffic over vehicular traffic and suggests that parking should not be provided for clientele as the Town provides public transportation.

There being no further testimony Mr. Evans asked if there were any further questions from Commissioners.

Mr. McCavitt asked if he were correct that under the zoning by-law this proposal is allowable by special permit as a change of use. Ms. Skiver answered in the affirmative.

Mr. Widdiss asked if the applicant has other businesses on the Island. Mr. Tomassian answered in the negative that he is in the computer leasing business off-Island.

Mr. Evans asked Mr. Tomassian if he would like to respond to any of the testimony presented.

Mr. Tomassian addressed Article 9 of the B-1 District which states in part that it is intended to create a compact pedestrian environment to keep business contained within the B-1 district. He stated that this is an area designated for business purposes. He then stated that there is a children's toy store on this street. He agreed that the sidewalk ends at the Pagoda Tree. Further, Mr. Tomassian stated that this is not an addition in square footage to the commercial space as it is already commercial. He stated that there are no proposed changes for the exterior of the building. Addressing the testimony which stated that the Town has made a statement regarding office use in this area regarding Mr. Rankin's office space he stated that he does not know if Mr. Rankin ever proposed this as retail space so therefore could not comment. Further, that the applicant wishes to keep the backyard as it exists however, if it is requested the applicant will provide parking.

Mrs. Custer then asked the number of employees which would be hired. Mr. Tomassian stated that he could envision 2 or 3 persons per floor.

Mr. Filley asked Mr. Tomassian if the applicant would consider restricting the back area to no further build. Mr. Tomassian answered in the affirmative and stated further this would allow space to provide employee parking if necessary.

There being no further discussion Mr. Evans closed the public hearing and kept the record open for one week at 9:25 P.M.

Following the close of the public hearing the following correspondence was received for the record:

To: Carol Borer, Executive Director, MVC, From: Martin Tomassian, Attorney representing Mr. Zeytoonjian, dated 11-18-87, RE: Submitting Assessor's plan indicating ownership and usage of surrounding properties. Also requesting that the MVC not restrict the building as to type of business or number of shops as restriction as to type and style of business would be disastrous to client. Mr. Zeytoonjian is however, philosophically committed to particular type and style of business discussed at public hearing. To: MVC, From: Garret Conover, Charlotte Inn, Dated 11-19-87, RE: Mr. Conover is opposed to parking in backyard of Morey/Zeytoonjian property, as this would mean cutting old trees, disturbance of guests in his Inn and adding to congestion on South Water Street. Letter also questions need for additional retail space in Town when much retail space goes unused. To: MVC, From: H. Harding Brown, Law Offices of Epstein, Epstein, Brown & Bosek, dated 11-17-87, RE: As a summer resident of 50 South Water Street, Mr. Brown is opposed to conversion of Morey house to commercial retail purposes. Recognizes that the zoning ordinances of Edgartown may permit use, but feels that specifically retail use in a predominantly residential neighborhood is inappropriate. Feels that office use within Historic District is a benign usage, feels that MVC should limit the extension of actual non-conforming uses for the welfare of the whole community. To: Carol Borer, Executive Director, MVC, From: Martin Tomassian, dated 12-1-87, RE: extension of due date on Zeytoonjian DRI to January 30, 1987.

FINDINGS

The Commission has considered the application and the information presented at the Land Use Planning Committee Meeting, the public hearing and discussions during its decision deliberations and based upon such considerations, makes the following findings pursuant to Section 14 of the Act:

1. THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF THE PROPOSED PROJECT WILL EXCEED THE PROBABLE BENEFITS OF THE PROPOSAL IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT. SPECIFICALLY, THE PROPOSED DEVELOPMENT IS FOUND TO BE IN CONFLICT WITH THE GENERAL PURPOSE OF THE COMMISSION AS STATED IN CHAPTER 831, ACTS OF 1977, AS AMENDED, NAMELY

THE PROTECTION OF THE HEALTH, SAFETY AND GENERAL WELFARE OF ISLAND
RESIDENTS AND VISITORS, BY PRESERVING AND CONSERVING THE ISLAND'S UNIQUE
VALUES AND BY PROTECTING THESE VALUES FROM DEVELOPMENT USES WHICH WOULD
PAIR THEM OR CAUSE IRREVERSIBLE DAMAGE TO THEM.

Pursuant to Section 15 of the Act, the Commission has considered the
question of whether the proposed development at this location is or is not
essential or especially appropriate in view of available alternatives on
the Island of Martha's Vineyard.

a. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT, AS SHOWN ON
THE PLAN, IS NOT ESPECIALLY APPROPRIATE NOR ESSENTIAL AT THIS LOCATION
IN LIGHT OF TESTIMONY AT THE PUBLIC HEARING AND OBSERVATIONS THAT
EXCESSIVE PEDESTRIAN TRAFFIC CURRENTLY EXISTS. SPECIFICALLY, THE
PROPOSED PROJECT AT THIS LOCATION WILL JEOPARDIZE PEDESTRIAN SAFETY BY
INCREASING PEDESTRIAN TRAFFIC WITHIN AN AREA THAT IS PRESENTLY LIMITED
BY THE WIDTH OF SOUTH WATER STREET, BEING SIXTEEN (16) FEET AT THE
PROPOSED SITE, AND THE WIDTH OF THE SIDEWALK, ON WESTERLY SIDE OF
SOUTH WATER STREET BEING 8 FEET AT MAIN STREET AND TAPERING TO 4-1/2
FEET FRONTING THE PROPOSAL; ON EASTERLY SIDE OF SOUTH WATER STREET
BEING 4 FEET AT MAIN STREET, TAPERING TO 3-1/2 FEET AND TERMINATING
OPPOSITE THE PROPOSAL.

Pursuant to Section 15 of the Act, the Commission has considered the
question of whether the proposed development will favorably or adversely
affect other persons and property, and if so, whether, because of
circumstances peculiar to the location, the effect is likely to be greater
than is ordinarily associated with the development of the types proposed.

a. THE COMMISSION FINDS THAT RETAIL SPACE IS INAPPROPRIATE AT THIS
LOCATION. THE POTENTIAL EXISTS, AS SHOWN ON THE PLAN, FOR AN INCREASE
IN THE INTENSITY OF USE, IN AN AREA PRESENTLY SURROUNDED BY
RESIDENCES, INN AND PROFESSIONAL SPACES, AND THEREFORE THE COMMISSION
FINDS THAT THE PROPOSED DEVELOPMENT WILL BE MORE DETRIMENTAL THAN
BENEFICIAL TO THE NEIGHBORHOOD AND DOWNTOWN EDGARTOWN.

Further, and pursuant to Section 15 of the Act, the Commission has
considered the question of whether the proposed development will adversely
affect the provision of municipal services and the burden on taxpayers in
making provisions therefore or burden unduly existing public facilities.

a. TESTIMONY AT THE PUBLIC HEARING FROM AN EDGARTOWN SELECTMAN INDICATED THAT THE TOWN'S PARKING FACILITIES ARE REACHING THEIR LIMIT AND THE ADDITIONAL ACCOMMODATION OF VEHICLES FOR PARKING OFF-SITE, PURSUANT TO THE TOWN'S ZONING BY-LAW, SECTION 9.4h, WILL PLACE AN EXCESSIVE STRAIN ON THE EXISTING FACILITIES. IN LIGHT OF THIS, THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WILL ADVERSELY AFFECT THE PROVISION OF MUNICIPAL SERVICES AND WILL BURDEN EXISTING PUBLIC FACILITIES.

The Commission disapproves the development application and denies permission to the Zoning Board of Appeals of the Town of Edgartown for the granting of the necessary development permits.


The Applicant may modify the development proposal and/or submit a new proposal to the Zoning Board of Appeals in the Town of Edgartown.

This Decision is written consistent with the vote of the Commission on January 21, 1988.

Any party aggrieved by a determination of the Commission may appeal to the 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 Town Clerk in the town in which the proposed development is located.

nn G. Early, Chairman

1/2/85
Date


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1/21/88
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990

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