

# THE MARTHA'S VINEYARD COMMISSION

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DATE: October 3, 1991  
TO: Planning Board, Town of Edgartown  
FROM: Martha's Vineyard Commission  
SUBJECT: Development of Regional Impact  
RE: Commercial development  
APPLICANT: Fisher Barn  
c/o Ed Cuetara  
P.O. Box 1262  
Edgartown, MA 02539

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## DECISION OF THE MARTHA'S VINEYARD COMMISSION

### SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the application of Fisher Barn, c/o Ed cuetara, P.O. Box 1262, Edgartown, MA 02539 for the construction of a commercial complex as shown on the plans entitled: "Site Plan for a Proposed Retail Complex, Assr. PCLS. 20A-15.2, 59 & 60.2, Upper Main Street, Edgartown, MA, prepared for Christopher Panagiotidis; date 2/15/91, revised 9/19/91;

Schofield Bros. of Martha's Vineyard, Professional Engineers/Land Surveyors, State Road, Vineyard Haven, MA, 02568, MV-5567, consisting of one (1) sheet; plus "Fisher Property, Edgartown, Site Plan 1:20; Ed Cuetara, Architect; Drawing #1; and Fisher Property, Edgartown, West Elevation 1/8=1=0", date 9/12/91, Ed Cuetara, Architect, unnumbered, consisting of two (2) sheets, making a total of three (3) sheets, (The Plan).

This Decision is rendered pursuant to the vote of the Commission on October 3, 1991.

The Planning Board of the Town of Edgartown may now grant the necessary development permits for the Applicant's proposal in accordance with the conditions contained herein or may approve in accordance with conditions contained herein and place further conditions thereon in accordance with applicable law, or may disapprove the development application.

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 Planning Board 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 into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record 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 June 27, 1991, and a re-opened hearing on September 12, 1991, at 8:00 P.M. at the Martha's Vineyard Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

The proposal is for the construction of a commercial development qualifying as a DRI since the proposal will have a floor area greater than 1,000 square feet.

The hearing was chaired by Alan Schweikert, Chairman of the Land Use Planning Committee who read the Public Hearing notice and opened the hearing for testimony at 8:21 p.m. He called upon the applicant for his presentation.

Ed Cuetara, agent for the applicant passed around a model of the proposed structure. He discussed the project, its size, shape and type. He noted that there would be four connected stores and each would have an employee bathroom. He discussed the lot and the existing structure, and past proposals for the site. He discussed the right of way which was given for joint usage by the bank, A & P and the Fisher property. He discussed the reasons for the shape of the building and the need for pedestrian oriented uses. He discussed the relation to the Dodson report for the area. He discussed the parking spaces, the loading zone and the trash containment area. He discussed the

plantings for the site and the maximum size of the building that could fit in the area. He discussed the lot coverage and the type of stores anticipated, year-round service stores. He also discussed meetings that had been held with abutters. He discussed the A & P acting as a magnet to draw people to the area.

Mr. Schweikert asked for a staff report. Mr. Clifford indicated that there would be one but since there had been two plans with identical dates submitted the staff was uncertain as to the right plan to review. Mr. Simmons discussed the new plans. Mr. Cuetara noted the plan with the loading zone was the proper plan. Mr. Simmons discussed the problem with parking, the use of the abutter driveway to backup, the differences between the plan and the Dodson report and other related matters. He discussed the potential traffic generations of around 200 trips per day. A discussion of the parking lay-out and arrangement followed. Mr. Cuetara discussed the various parking lots in the area.

Ms. Greene raised a question regarding the number of trips per day and which season. Mr. Simmons noted that low ITE rates were 150 weekday, summer 200 weekday, higher on weekends and higher overall since local rates are greater than ITE rates.

Ms. Sibley raised issue of parking and which had been referred to Mr. Cuetara noted a lot at Al's Package store, the expansion of the A & P and the lot at the bank. Ms. Sibley further asked about employees. Mr. Cuetara noted that probably 2 per store, no employee parking on site, employees expected to use the trolley to get to work.

Mr. Early questioned where the dumpster was located. At front, behind fence on side was the response. A discussion of the location and blockage of the dumpster by parking followed. Mr. Early also questioned a noise factor and how the area was to be heated and cooled. Mr. Cuetara indicated that it had not totally been decided yet and went on further to discuss the noise in the area already.

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Ms. Bryant questioned accessibility. Yes was the answer. Ms. Bryant questioned accessibility to bathrooms. Not accessible, for employees only was response. A discussion of whether there could be handicapped employees or not followed. A discussion of where other bathrooms in the area were located followed.

Ms. Greene raised a question regarding abutter feelings. A discussion of this matter followed. Tom Fisher, owner of the property, discussed his contacts with the abutters and the various feelings that had been conveyed to him by them. A discussion of any contacts with the A & P followed.

Mr. Sullivan asked for a repeat of the square footage. - 3,825 square feet interior gross. A discussion of this matter followed. Ms. Greene asked for the actual lot size. - 12,495 square feet.

Mr. Donaroma asked about the size of the original proposal. - 4,600 square feet. Mr. Donaroma asked about the calculation of open space. Mr. Cuetara indicated that he had subtracted the structure, the parking and the access road to determine the open space area. A discussion of this matter followed.

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Mr. Sullivan questioned the set backs. Mr. Cuetara noted seven (7) feet and further discussed the requirements.

Ms. Greene questioned whether there were sewers or septic on-site. On-site septic would be along the sides of the structure. Mr. Schweikert asked about the parking and the relationship to the A & P. Mr. Simmons discussed the general parking in the area. Ms. Greene discussed the issue of the bank lot being full of employees from the downtown bank office.

Mr. Donaroma questioned whether there were continuing talks with the A & P. Don Gazell responded yes. Mr. Jason questioned the idea of a swap of land with the A & P. No further discussion had been held.

Mr. Schweikert called for town boards.

Ted Morgan, Selectman, discussed the problems in the area with the A & P. He was opposed to proposal due to

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cramming of another commercial enterprise into a crowded area. He discussed problems of design of proposal as well as year-round businesses and rental issues. He felt that it was unfair to the abutters.

Mr. Schweikert called for proponents - there were none. He then called for opponents.

Mark Lovewell discussed the neighborhood and his feelings about the proposal. He discussed the various plans that have taken place within the area. He expressed a concern for the unknown - who would be the responsible future owners. He expressed concern for the size of the proposal, its excessiveness and what affect the potential impact of the proposal will have on the neighbors. He discussed the various points of confusion that had occurred during previous meeting in the town.

Jack Butman, abutter, raised the issue of his right of passage - a deeded right of way. A discussion of this matter followed. A discussion of the setbacks in the area followed.

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A discussion of mixed use zoning followed.

Alfred Johnson commented that he felt the proposal would be good but was only speaking for himself and he gave his reasons.

Mark Lovewell spoke of the past uses of the site.

Mr. Schweikert asked the applicant for further comments.

Mr. Cuetara discussed what he called the right of passage and its location. He discussed the access to the Butman property. A discussion of this matter followed.

Attorney Montgomery for the applicant, indicated that the rights of Mr. Butman would be protected. A discussion of this issue followed. Mr. Gazell discussed the various conversations that had been held with the A & P and the Bank. He also noted that there was no reason not to have handicapped bathrooms in the stores.

Mr. Cuetara discussed the design of the structure and how it would relate to the abutters.

Jean Andrews, Clark Drive, questioned the type of outdoor lightning that would be provided. Mr. Cuetara indicated antique



post lights.

Mr. Johnson questioned if less stores could be made. Mr. Cuetara felt possibly but the size of the structure would remain the same.

Mr. Lovewell discussed the philosophy of developers and raised the issue of obtaining a letter from the A & P regarding the project. A discussion of this matter followed.

Mr. Butman questioned the hours of operation. Mr. Cuetara was uncertain. Mr. Butman further discussed the right of way and the amount of parking that may block the driveway. A discussion of this matter followed.

Ms. Sibley questioned who would ticket on private property if they block the driveways. She wanted to know who would be responsible. A discussion of this matter followed.

Ms. Greene questioned the location of the right of way. Mr. Butman presented the deed. Ms. Greene asked about sales of property. The land is under agreement and there will be a pharmacy. A discussion of the commercial usage of the property followed.

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Ms. Harney questioned when the area was zoned and did the abutters know that commercial was coming into the area. Mr. Lovewell discussed the past usages and knowledge of what could happen in the area. Ms. Harney discussed the town's present problems of the A & P. A discussion of this matter followed.

Mr. Jason questioned the wording on the deed regarding the Right Of Way. (R.O.W.) Ms. Greene read the wording in the deed indicating that the R.O.W. was along the southeasterly side of the property. All noted that there may be a problem. A discussion of this matter followed.

A discussion of how much discussion had occurred with the A & P followed. Mr. Best indicated a concern for making the parking requirements if the R.O.W. issue were not resolved and the parking lot needed redesign. A discussion of the parties resolving the issue together followed.

Mr. Lovewell felt the need to address the issue of fire

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protection when stores are in groupings or clustering.

The issue of making the complex more compact with less stores followed.

Mr. Donaroma indicated that the Planning Board had been working with the applicant on parking issues with the A & P. He discussed the committee that had been formed to address the issues. He discussed the problems with the A & P and the issues that were being addressed.

There being no further testimony, the hearing was closed at 9:40 p.m. and the record was kept open for one month.

The Martha's Vineyard Commission held a re-opened public hearing on Thursday, September 12, 1991 at 8:00 P.M. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

Alan Schweikert, Chairman of the Land Use Planning Committee, (LUPC), read the Hearing Notice, and opened the hearing for testimony, at 8:02 p.m. He called upon the applicant to make the presentation.

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Ed Cuetara, agent for the applicant, made the presentation. He noted that the plan had been considerably altered and hopefully would be more acceptable to the Commission. He described the new proposal as a residential looking structure with an el. He noted that there would be 2,800 square feet in the building. He indicated a 20% lot coverage. He noted that a planting plan had been previously submitted and that the parking would be eliminated. There may be two spaces for handicapped and no more than three stores. He discussed the possible inclusion of two apartments on the second floor. Mr. Schweikert asked for a staff review. Mr. Clifford noted that this was the first time anyone had seen the proposal and he didn't feel that a staff review was necessary.

Mr. Sullivan asked for a review of the parking proposal. Mr. Cuetara discussed the possible parking. Mr. Sullivan asked about the abutter Right of Way (ROW). Mr. Cuetara noted that there would be no interference with the existing ROW. A

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discussion of who the abutters were followed. Mr. Cuetara discussed the rights of the abutters with respect to the new proposal. Mr. Briggs questioned the surrounding uses. Mr. Cuetara pointed out the various uses and their locations. Ms. Sibley raised a question of whether patrons would be allowed to park in other areas. Mr. Cuetara felt that was a question for the local board. He further discussed his feeling on the issue. Ms. Sibley raised the issue of monies in lieu of parking. The response indicated that the giving of the ROW should be used to satisfy that issue. Mr. Cuetara further discussed the matter of parking. Ms. Greene raised a question of setback. Mr. Cuetara indicated five (5) feet at the corner. Mr. Colaneri asked for some input from Mr. Donaroma with respect to the parking issue since he was the Edgartown Planning Board member. Mr. Donaroma discussed the issue of no parking and the feeling of the Planning Board. There had been no major discussion of the issue but the Board did like the change in the design and the smaller size. He indicated that the Board had discussed only briefly the shared

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parking. He felt the Board could deal with the issues later. Mr. Jason questioned the capacity to handle the two apartments. Mr. Cuetara discussed the matter. Ms. Greene questioned further the capacity of the septic system. Mr. Cuetara was unsure but felt there was no problem. Mr. Donaroma questioned where the apartment residents would park. - on or off-site. Mr. Cuetara was unsure but discussed the possible location on-site. Following a brief conference, Mr. Cuetara indicated that the apartments had been dropped. Mr. Cuetara further discussed the parking issue.

Mr. Colaneri asked for clarification from the Edgartown Planning Board member as to how the proposal met the Dodson plan. Mr. Donaroma felt the proposal was moving toward the goals of the report and clarified the issue of no parking on-site. He indicated that it was a concern of the LUPC and the Planning Board had only been asked to comment. A discussion of this matter followed. Ms. Greene questioned where the deliveries

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would be made. Mr. Cuetara indicated where there would be service. Access to the second floor would be inside.

Mr. Schweikert asked for clarification on what would be on the second floor - apartments, storage, whatever. Mr. Cuetara indicated that an issue would not be made of apartments. Ms. Bryant discussed accessibility to the retail spaces.

Ms. Sibley questioned whether the apartments, if any, could be low or moderate income. Yes, was the response.

There being no further questions, Mr. Schweikert called for comments from Town Boards. There were none.

Ms. Sibley questioned whether town boards were even aware of the new design. Mr. Cuetara commented on the matter with respect to the Historic Commission. Mr. Donaroma indicated that the Planning Board comment was limited to the fact that it was a move in the right direction.

Mr. Schweikert called for proponents.

Donald Gazell felt the proposal had parking available and could or could not be shown. He discussed the new design and discussed the apartments further.

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Tom Fisher, owner, discussed the cooperation that had been given to the Town, the A & P and others. He discussed the traffic plan previously designed and that others had not implemented the program.

Mr. Schweikert then called for opponents.

Jack Butman discussed the new plan and other abutter feelings. He raised several points regarding the parking issue and his ROW. A discussion of this matter followed. Mr. Butman did not object to the proposal but wanted assurance that his ROW was preserved.

Mr. Schweikert called for other testimony - there was none. He then called for other comments/questions or testimony from Commissioners. Mr. Sullivan questioned whether the ROW would be preserved if parking were required on-site; would there be room enough. Mr. Cuetara indicated yes. A discussion of what type of ROW was involved. Mr. Colaneri discussed the intent of



pedestrian oriented areas and discussed the original square footage as compared to what now was being presented.

Mr. Clifford asked for a complete set of plans to be submitted.

There being no further testimony the hearing was closed at 8:31 p.m. with the record remaining open one week.

#### FINDINGS AND CONDITIONS

The Commission has considered the application and the information presented at the public hearing and based upon such considerations, makes the following findings pursuant to Section 14 of the Act.

- A. The Commission finds that the probable benefits of the proposed development, subject to the conditions set forth herein, will exceed the probable detriments of the proposal in light of the considerations set forth in Section 15 of the Act.
- B. The Commission finds that the proposed development will not interfere substantially or unreasonably with the achievement of the objectives of any general plan of the Town of Edgartown or any general plan of the County of Dukes County.
- C. The Commission finds that the proposed development as set forth in the Application and the plans, and subject to the conditions set forth herein, will be consistent with local development ordinances and by-laws.
- D. The Commission finds that the development proposal will be more beneficial than detrimental when compared to alternative manners of development or development occurring in alternative locations.

Pursuant to Section 15(c) of the Act, the Commission has considered 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 and in light of the considerations discussed in the record and within the Decision, the Commission sets the following condition:

THAT FINAL APPROVAL FOR THE LIGHTING, PARKING, LANDSCAPING, PEDESTRIAN ORIENTATION, SCREENING, TRAFFIC FLOW AND OTHER RELATED ISSUES FOR THE PROPOSED DEVELOPMENT SHALL REST WITH THE EDGARTOWN PLANNING BOARD, THROUGH ITS SPECIAL PERMIT PROCEDURE FOR APPLICATIONS IN THE B-II UPPER MAIN STREET DISTRICT.

Pursuant to Section 15(d) of the Act, the Commission has considered whether the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for Island residents and in light of the considerations discussed in the record and within the Decision, the Commission strongly urges the following:

THAT THE BOARD OF HEALTH IN EDGARTOWN CONSIDER FAVORABLY THE INCLUSION OF TWO AFFORDABLE HOUSING APARTMENTS ON THE SECOND FLOOR OF THE PROPOSED STRUCTURE AS PER THE APPLICANT'S DISCUSSION AND OFFER AND THE BOARD OF HEALTH IS ENCOURAGED TO CONSIDER THE GRANTING OF A VARIANCE TO THE TITLE V FLOW REQUIREMENTS, SHOULD ONE BE NEEDED.

The Commission finds that the proposed development is consistent with local ordinances and by-laws to the extent it is required to, only the application being before it at this time.

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

The Decision is written consistent with the vote of the Commission: October 3, 1991.

Any Applicant aggrieved by a Decision of the Staff or Committee hereunder, may appeal to the full Martha's Vineyard Commission which shall decide such Appeal, after notice and hearing, within 21 days of the close of the public hearing.

The Executive Director may issue Certificates of Compliance which shall be conclusive evidence of the satisfaction of the conditions recited therein.

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 Town Clerk in the Town in which the proposed development is located.

Jane A. Greene  
Jane A. Greene, Chairman

10/03/91  
Date

Norman Friedman  
Notary

10/3/91  
Date

NORMAN FRIEDMAN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES OCT. 10, 1997

*[Faint handwritten notes and signatures]*