

THE MARTHA'S VINEYARD COMMISSION

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DATE: February 17, 1994

TO: Board of Selectmen,
All Permit Granting Boards, Town of Edgartown

FROM: Martha's Vineyard Commission

SUBJECT: Development of Regional Impact
RE: commercial development

APPLICANT: Leo P. Convery
P.O. Box 1318
Edgartown, MA 02539

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby denies permission for the granting of permits for the development contained in the Application of Leo P. Convery, P.O. Box 1318, Edgartown, MA 02539 as shown on the plans entitled: "Mariner's Landing a Plan of Land in Edgartown, MA prepared for A.M. and L.P. Convery, scale 1"=20', November 30, 1993, Smith and Dowling, Engineers - Surveyors - Planners, State Road, P.O. Box 1087, Vineyard Haven, MA, Job No. 3059.2", consisting of one (1) sheet;

plus "Site Plan, Mariner's Landing, Existing Building Footprints, Existing Parking Spaces, no scale, prepared for Leo P. Convery, Edgartown, MA by Carol Borer, Planning Consultant, Vineyard Haven, MA, December 1993", consisting of one (1) sheet; plus "Mariner's Landing, Site Plan, Existing and Proposed Features, Scale 1"=20', January 20, 1994, Revised January 25, 1994, prepared for Leo P. Convery, Edgartown, MA, prepared by Carol Borer, Planning Consultant, Vineyard Haven, MA", consisting of four (4) sheets; plus various existing and proposed floor plans consisting of two (2) xeroxed sheets; making a total of eight (8) sheets," (the Plan).

This Decision is rendered pursuant to the vote of the Commission on February 17, 1994.

The Commission disapproves the Application and denies permission to the permit-granting boards of the Town of Edgartown

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to grant the necessary development permits.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact Section 3.101. The Application was referred to the Commission by the Board of Selectmen of the Town of Edgartown requesting that the proposal be designated as a Development of Regional Impact pursuant to Chapter 831 Acts of 1977 as Amended (the Act).

A duly noticed public hearing on the request for designation was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2 on Thursday, November 18, 1993 at 7:38 P.M. The hearing was opened and immediately continued to Thursday, December 2, 1993.

The Commission conducted a continued hearing on the request for designation of the Application as a DRI on Thursday, December 2, 1993 at 7:37 P.M. Following the testimony presented the Commission voted to designate the Application as a Development of Regional Impact and scheduled a hearing for Thursday, January 6, 1994 at 7:30 P.M.

A duly noticed public hearing was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, on Thursday, January 6, 1994 at 7:30 P.M. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA. The hearing was closed the same night.

A summary of the testimony provided at the hearings is provided as Exhibit A attached hereto. This summary is for the convenience of the reader only and was not relied upon by the Commission in reaching its decision in this matter.

The proposal is for the conversion of an indoor commercial recreation facility into a movie theater.

FINDINGS AND CONCLUSIONS

The Commission has considered the Application and the information presented at the public hearing and based upon such

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considerations, makes the following findings pursuant to Section 14 of the Act.

- A. **THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF THE PROPOSED DEVELOPMENT WILL EXCEED THE PROBABLE BENEFITS OF THE PROPOSAL AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT. (SECTION 14(A) OF THE ACT).**

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." Consistent with this statutory mandate, the Commission has long been concerned with the soundness and stability of local economies. Similarly the Commission has long been concerned with the integrity and vitality of the village or town centers which promote a sense of community and serve as the heart of each of the Island's Communities. It is these very areas that perpetuate the sense of community and are one of the reasons why people, year-round, seasonal and visitor alike enjoy the Island atmosphere and uniqueness.

- 1. Based upon the record and the testimony presented therein, the Commission finds that the proposed development at this location is not essential or especially appropriate in view of available alternatives. (Section 15(a) of the Act).**

The Commission does not feel that the proposal is essential in the location proposed because it is the Commission's belief that such a development in the location proposed would perpetuate the ghost town image of the village center, nor does the

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Commission feel that the development is especially appropriate in the location proposed given that there are other alternatives presently proposed in more appropriate locations which would have less impact upon the local character of the village centers.

The Applicant has, however, suggested that the development as proposed would enhance the business area of the Town and provide an economic benefit by providing a service that is currently lacking within the Town. The potential beneficial impact upon the Town has been questioned by some during the public hearing who have noted that the village center needs a boost to enable it to recover its vitality.

The Commission has considered the presentation of the Applicant and others at the public hearing and has not been persuaded that the development as proposed is appropriate in the proposed location.

2. **The Commission further finds that the proposed development will adversely affect other persons and property (Section 15(c) of the Act).**

The Commission does recognize that the proposal is with in a business zone and that previous uses within the existing structure have been of a commercial nature. Notwithstanding the Applicant's attempts to mitigate much of the concerns of the proposal's impact upon the neighborhood and the efforts of the Applicant to mitigate the impact of noise on the surrounding areas. The Commission has not been persuaded that the mitigation measures proposed by the Applicant can or will prevent the penetration of and impact of noise within the surrounding residential area.

3. **The Commission finds that the proposed development would interfere with the ability of the Town of Edgartown to achieve the objectives set forth in the Edgartown Master Plan dated April 1990 and adopted by the Edgartown Planning Board (Section 15(g) of the Act).**

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The proposal would interfere with the accomplishment of objectives in the Edgartown Master Plan as related to downtown economic revitalization for the reason described above with respect to section 15(a) of the Act.

4. **The Commission finds that the proposed development would contravene the land development objectives of the Commission as stated in the Regional Island Plan including the Martha's Vineyard Commission Regional Policy Plan adopted by vote of the Martha's Vineyard Commission, June 1991 (Section 15(h) of the Act).**

The proposed development contravenes no less than three of the objectives of the Regional Island Plan. First, that plan seeks to promote balanced year-round economic activities and economic vitality while protecting historic integrity. Basic Economic Development Policy I-1 states:

Promote more year-round economic activity. Ensure economic vitality while protecting historic integrity.

The proposal would be in direct contravention of this policy by furthering the demise of the historic center of the Town of Edgartown.

Second, the proposed development contravenes the objective of the Regional Island Plan to preserve the qualities of the Vineyard for all residents, visitors and the like. Seasonal Economic Policy I-10 states:

The Island's qualities should be preserved for summer residents, visitors and taxpayers as well as for those who live on Martha's Vineyard year-round.

The proposal would run afoul of this policy by again furthering the reduction of the Island's quality through the continued loss of a vital, vibrant town center.

Third, the proposed development contravenes the objective of the Regional Island Plan to prevent winter ghost towns, and keep existing business districts vital and workable. Commercial

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Growth Policy I-22 states:

Keep existing business districts vital and workable. Restore and renovate historic buildings as an alternative to new construction wherever possible. Avoid new commercial development that creates sprawl or strip development. Prevent winter ghost towns. Support planned economic growth.

The proposal would contravene this policy through the ignoring of the vitality of the downtown business area. The development is proposed to be located in a part of town where the business district is currently working and vital. The Commission is not persuaded that by locating this development in the location proposed that it would not further the ghost town image of the more traditional town center not only in the winter but also in the summer season.

After careful review of the submittals and testimony presented by the Applicant and others, the Commission has concluded that the probable benefits of the proposed development do not exceed the probable detriments. Although the Commission reaches this conclusion on the basis of its evaluation of the factors set forth in sub-sections 15(a), (c), (g) and (h) of the Act, the Commission notes that its findings with respect to any one of the factors discussed in this section of the Decision would be sufficient to support the conclusion that the probable detriments of the proposed development exceed the probable benefits.

The Commission considered the factors set forth in Section 15(b), (d), (e) and (f) of the Act and found that either such factors were not pertinent to the issues raised by the proposed project, or such factors were relatively minor in their effects in comparison to other factors.

B. AS DESCRIBED ABOVE, WITH RESPECT TO SECTIONS 15(G) AND (H) OF THE ACT, THE COMMISSION FINDS THAT THE PROPOSAL WILL SUBSTANTIALLY AND UNREASONABLY INTERFERE WITH THE ACHIEVEMENT OF THE OBJECTIVES OF

THE GENERAL PLAN OF EDGARTOWN AND
THE REGIONAL ISLAND PLAN. (SECTION
14(B) OF THE ACT).

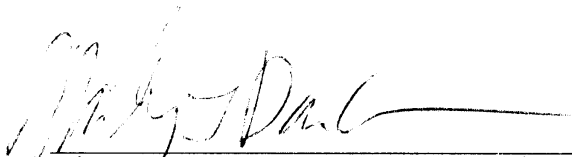
- C. THE COMMISSION FINDS THAT THE
PROPOSED DEVELOPMENT IS GENERALLY
CONSISTENT WITH DEVELOPMENT
ORDINANCES AND BY-LAWS OF THE TOWN
OF EDGARTOWN.
- D. THE COMMISSION FINDS THAT THE
PROPOSED DEVELOPMENT IS NOT WITHIN
ANY DISTRICTS OF PLANNING CONCERN
AND THEREFORE THIS ISSUE IS NOT
PERTINENT TO THE PROPOSAL.

The Commission disapproves the Application and denies
permission to all Permit Granting Boards of the Town of Edgartown
to grant the necessary development permits.

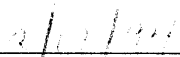
The Applicant may modify the development proposal and/or
submit a new proposal to the Permit Granting Boards of the Town
of Edgartown.

This Decision is written consistent with the vote of the
Commission: February 17 , 1994.

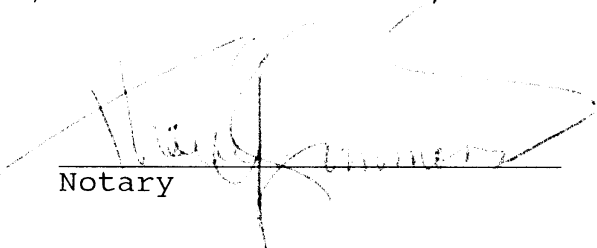
Any party aggrieved by a determination of the Commission may
appeal to Superior Court within twenty (20) days after the
Commission has sent the Applicant written notice, by certified
mail, of its Decision and has filed a copy of its Decision with
the Town Clerk of the Town in which the proposed development is
located.



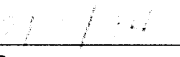
Michael J. Donaroma, Chairman



Date



Notary



Date

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EXHIBIT A
SUMMARY OF THE HEARING TESTIMONY

The Martha's Vineyard Commission held a public hearing on Thursday, November 18, 1993 at 7:38 P.M. in the Olde Whaling Church, Main Street, Edgartown, MA pursuant to Section 14(e) of Chapter 831 of the Acts of 1977, as amended, to determine whether the following should be designated as a DRI:

Applicant:	Leo P. Convery P.O. Box 1318 Edgartown, MA 02539
Proposal:	conversion of commercial recreational facility to a movie theater off Vineyard Haven-Edgartown Road at the Triangle, Edgartown, MA.
Designation Requested By:	Board of Selectmen Town of Edgartown

Following the reading of the public notice at 7:47 P.M., Ms. Sibley immediately continued the hearing until December 2, 1993, in the MVC offices, Oak Bluffs, MA.

The Martha's Vineyard Commission held a continued public hearing on Thursday, December 2, 1993, at 7:38 p.m. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA on issue of designation of a proposal as a Development of Regional Impact (DRI).

Applicant: Leo Convery
P.O. Box 1318
Edgartown, MA 02539

Location: off Edgartown - Vineyard Haven Road
at the Triangle, Edgartown, MA

Proposal: Conversion of a commercial building to movie
theater.
Designation requested by Board of Selectmen

Michael Donaroma, Chairman of the Martha's Vineyard Commission read the public notice and noted that Ms. Sibley had removed herself from the meeting and left the room. He then called upon the Selectmen for their reasons for referral.

Ted Morgan, Board of Selectmen, discussed the feelings of

the Board that it was not just a change of use but there will be additional problems created for the neighbors associated with the proposed use. He felt that this proposal should go through the process as other similar proposals for theaters have. He also discussed the conflicts that existed on the Planning Board and noted that this also was a reason for referral.

He noted that many had hoped that the theater would be in the downtown area.

Mr. Briggs questioned what the conflicts on the Planning Board were. A discussion of this matter followed.

George Piper, Board of Selectmen, discussed his feeling with respect to two theaters in the Town. He felt that it was not a DRI.

Mr. Donaroma then called for comments from the possible applicant.

Carol Borer, agent for Mr. Convery, discussed the property location, the building and its size and usage. She then discussed the proposed changes to the structure. She noted the times of operation proposed, 5:00 p.m. to 11:30 p.m. She then discussed parking issues. She then discussed the relationship of the proposal to the trolley shuttle and the rest of the B-II area.

Mr. Colaneri questioned which item the proposal had been sent to the MVC. Mr. Donaroma noted #1.

Ms. Borer indicated that the applicant felt that this was a local matter and had no impact upon the region since it already existed and was merely a change of tenant.

Mr. Donaroma then called for testimony from town boards - there was none.

He then called for testimony from the public.

Norman Rankow discussed the past work of the Planning Board in making movie proposals a special permit. He personally felt a movie theater should be down town and felt that the economy should dictate where such theaters would survive.

Terese Shea, abutter, spoke for a number of abutters. She

discussed the potential impact upon the neighborhood of a movie theater. She felt that the proposal needed to be reviewed as a DRI. She discussed traffic and the usage of the local roads. She discussed potential Board of Health issues with respect to Lily Pond well area.

Mr. Donaroma then called for any final comments from the applicant. Ms. Borer summarized the feelings of the applicant and asked that any correspondence on this matter be read.

Mr. Donaroma read the letter from the Planning Board regarding the matter. He then read a letter from Richard O'Neil regarding this matter.

Mr. Donaroma then noted that the conflicts within the Planning Board had been taken care of as two members had stepped down and the third no longer had any conflict.

A discussion of various State Ethics Commission policies followed.

There being no further testimony, the hearing was closed.

The Martha's Vineyard Commission held a public hearing on Thursday, January 6, 1994, at 7:30 P.M. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA, regarding the following Development of Regional Impact (DRI):

Applicant: Leo Convery
P.O. Box 1318
Edgartown, MA 02539

Location: off Edgartown - Vineyard Haven Road
at Mariner's Way
Edgartown, MA

Proposal: conversion of a commercial recreational structure into a movie theater qualifying as a DRI since the MVC has so designated the proposal as such under Section 14(e) of Chapter 831 of the Acts of 1977 as amended

Michael Donaroma, Chairman of the Martha's Vineyard Commission read the hearing notice and opened the hearing for testimony at 7:36 p.m.

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Mr. Hall and Ms. Sibley both left the room and abstained from the proceedings.

Mr. Donaroma called for applicant presentation.

Carol Borer, agent for the Applicant, presented the proposal. She distributed a series of photographs showing existing conditions and discussed previous usages in the structure. She further discussed the various uses in the area, the handicapped access, the parking both existing and proposed. She explained how the theater would fit into the existing structure, the adequacy of the existing septic system and other related matters.

She then discussed the potential site access points. She then discussed the hours of operation of the surrounding uses and those of the proposed theater to indicate how conflicts would be eliminated. She then discussed the traffic issues in the general area and the usage of the shuttle bus in the area.

Ms. Borer then noted that she had submitted a petition in favor of the proposal, and one against. She then discussed the attempt to meet with the abutters to discuss concerns. She discussed the options available to make site plan more acceptable to abutters. She submitted a copy of the letter to the abutters for the record.

John Best noted the site plan was inaccurate with respect to parking. A discussion of this matter followed.

Mrs. Marinelli questioned the depth to groundwater. A review of this matter followed.

Mr. Early questioned whether the 90 trips were per showing or per day. Ms. Borer indicated per showing plus any additional weekend matinees.

Mrs. Marinelli questioned how many of the petition signers were taxpaying voters. A discussion of this matter followed.

Ms. Riggs raised a question on what the objections were. Ms. Borer indicated that noise dominated and parking on Mariners Way.

Mr. Convery noted that the depth to groundwater would be 10'.

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Mr. Sullivan questioned the exterior changes that may occur. Ms. Borer noted that the changes would be the elimination of windows and possibly a fire exit to be installed.

Mr. Sullivan questioned the air conditioning. A new unit would be added.

Mr. Colaneri discussed the net effect of the proposed parking changes. A discussion of this matter followed. Mr. Colaneri noted that there were no walkways linking the various parking areas.

A discussion of any lighting proposals followed.

Mr. Colaneri again questioned whether there were any changes proposed to the walkway system. A discussion of this issue followed.

Mr. Jason questioned which of the banks operated at night. A discussion of this matter followed.

Ms. Greene questioned the time of operation of the Island-wide shuttle. Ms. Borer did not know. Ms. Greene questioned the lack of landscaping or fencing for noise abatement. A discussion of this matter followed.

Ms. Bryant questioned certain parking areas with respect to noise abatement. A discussion of this matter followed.

Mr. Donaroma then called for staff review.

David Wessling, MVC staff discussed the proposal with respect to traffic on-off and internal to the site. He discussed various matters related to parking, the shuttle and other points with respect to vehicular usage of the area and the site. He then discussed the traffic issues, the level of service and related matters.

Mr. Donaroma discussed relation of traffic and movie scheduling.

Mr. Donaroma then called for town boards.

Ted Morgan, Selectman, felt proposal should be reviewed as have all other theater proposals in town. He discussed the potential traffic impact. He discussed the past history of the area, the present uses in the area. He discussed the activities

related to downtown revitalization. He questioned whether the proposal was in the best interest of the abutters, or of the downtown area. He also felt there should be an annual review and that the MVC should check into the past 4 Flags decision with respect to the use of Mariners Way.

Richard O'Neil, Edgartown Planning Board, discussed the helping of the applicant. He discussed the proposal with respect to the market economy; he also discussed the issue of circulation in and around the site. He felt the Board could handle all of the issues on a town level.

Paul Sheehan, Edgartown Planning Board, discussed a double standard potential. He discussed the need for two theaters in town and that the winter was a different time.

Mr. Donaroma then called for those in favor.

Curry Jones discussed the Upper Main Street plan and what it had envisioned for the area. He felt the proposal satisfied the requirements of the plan. He felt the plan should be moved forward.

Frank McClennan, operator of island movie theaters, discussed the issue of movie theaters and the number of screens needed to make the entire package work. He discussed noise levels both inside and outside the structure.

Mr. Donaroma raised a number of issues related to the operation of a theater.

Gene Barbaddo questioned how the shuttle bus would effect the traffic issue.

Mr. Donaroma then called for those opposed.

Joyce Swartz - abutter discussed the issue of usage of Mariners Way. She read a prepared statement with respect to the proposal. She noted that the use was a special permit for the building. She discussed the relation of the proposed parking to the Zoning By-law.

Peter Look, agreed with previous assessment. He further raised the issue of meeting Lily Pond well regulations.

Ms. Barbario agreed with all previous statements and felt

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that the impact would be too great for the area.

There being no further public testimony, Mr. Donaroma asked the applicant for a summation.

Ms. Borer clarified a point regarding vehicle usage of the area.

Mr. Briggs questioned the use of any bicycle racks. A discussion of this matter followed.

Ms. Borer discussed the special permit aspects of the Zoning By law. She read various aspects of the Dodson Plan for B-II. She also felt the proposal was in line with the goals of Edgartown.

There being no further testimony the hearing was closed at 9:05 p.m.

Edgartown, Mass. Feb 20 1984
at 8 o'clock and 35 minutes A
received and entered with Dukes County Deeds
book 4227 page 364

Attest Benjamin W. King

Register