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Decision of the Martha's Vineyard Commission

DRI 566M – Cornerstone/M.V. Electric

1. SUMMARY

- Referring Board: Planning Board, Town of Tisbury, MA
- Subject: Development of Regional Impact #566M
Cornerstone/M.V. Electric
- Project: To subdivide one lot into two lots and construct a two-story building for a workshop and office of Cornerstone Builders with a two-bedroom apartment.
- Owner: Marc O'Donnell, M.V. Electric
- Applicant: Gene Erez, Cornerstone Builders
- Applicant Address: P.O.B. 2547, Oak Bluffs, Massachusetts 02557
- Project Location: 44 Evelyn Way, Tisbury, MA Map 22-C Lot 7.1 (0.53 acres)
- Description: To subdivide one 22,680 square foot lot into two 11,340 square feet lots and construct a two-story 4,235 square foot building for the shop and office of Cornerstone Builders with a two-bedroom apartment.
- 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 February 21, 2008.
- Written Decision: This written decision was approved by a vote of the Commission on April 3, 2008.

The permit-granting authorities of the Town of Tisbury 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 was referred to the Commission on September 5, 2007 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, Sections 3.201 - Any development which proposes to divide land which is located in a business, commercial or light industrial zoning district. The project also triggers 3.102a, the once a DRI always a DRI trigger.

2.2 Hearings

Notice: Notice of a public hearing on the Application was published in the Vineyard Gazette, January 25, 2008.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on February 7, 2008.

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 "Floor Plans: A-01", consisting of 1 page of floor plans and perspectives, prepared by Sullivan O'Connor Architects, POB 989, Oak Bluffs, MA 02557, November 14, 2007.
- P2 "Exterior Elevations: A-02", consisting of 1 page of exterior elevations, prepared by Sullivan O'Connor Architects, POB 989, Oak Bluffs, MA 02557, November 14, 2007.
- P3 "Building Sections: A-03", consisting of 1 page of sections and site plan, prepared by Sullivan O'Connor Architects, POB 989, Oak Bluffs, MA 02557, November 14, 2007.
- P4 "Site Plan", consisting of 1 page of building, parking, lot lines, septic, and storm water management locations, prepared by Sourati Engineering Group, POB 4458, Vineyard Haven, MA 02568, February 7, 2008.
- P5 "Site Plan with Drainage Details", consisting of 1 page of building, parking, and lot line locations, prepared by Sourati Engineering Group, POB 4458, Vineyard Haven, MA 02568, February 1, 2008.
- P6 "Plan of Land", consisting of 1 page of lot line locations, prepared by Sourati Engineering Group, POB 4458, Vineyard Haven, MA 02568, August 28, 2007.

2.4 Other Exhibits

- E1. Referral to the MVC received from the Tisbury Planning Board September 5, 2007.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, February 4, 2008.
- E3. Photographs of the site, taken on November 30, 2007 by MVC staff members, Paul Foley and Mark London.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, November 26, 2007.
- E5. Minutes of the Commission's Land Use Planning Committee meeting, February 11, 2008.
- E6. Minutes of the Commission's Public Hearing, February 7, 2008.
- E7. Minutes of the Commission Meeting of February 21, 2008 – Deliberations and Decision.
- E8. Minutes of the Commission Meeting of April 3, 2008 – Approval of the Written Decision.

2.5 Summary of Testimony

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

- Presentation of the project by Ray Bilodeaux, George Sourati (Engineer), Chuck Sullivan (Architect).
- Staff reports by Paul Foley, MVC DRI coordinator.

3. FINDINGS

3.1 Project Description

- The proposal is to subdivide one 22,680 square foot lot into two 11,340 square feet lots and construct a two-story 4,235 square foot building for the shop and office of Cornerstone Builders with a two-bedroom apartment above.
- The first floor workshop area would be 2,098 sf; the second floor office would be 1,317 sf; and the two-bedroom second floor apartment would be 820 sf.
- Cornerstone Builders plan to use the building as their shop and office with an apartment for employees. Cornerstone has approximately 20 employees though the building would be for two secretaries, two employees in the workshop, and the office for the owner.
- The 15 employees on crews are not expected to come to the office often. This proposal is a smaller building than was approved by the MVC in 2003 but the previous proposal was never built and the approval has expired.
- The parking lot on the M.V. Electric side of the property has been expanded.

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 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.

3.4 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 IN LIGHT OF 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 proposal is an in-fill project that is appropriately located in the B-2 District in Tisbury. The Commission notes that this is a mixed-use development that conforms with the plan of the town to transition the B-2 into a mixed-use neighborhood.

A2 The Commission finds that the proposed development would have a minimal 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 septic plan is outside of the Tashmoo Watershed as it is understood to be today. The Commission notes that future development in the Tashmoo Watershed may require enhanced treatment to be more widely available.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located in the B-2 which is a commercial and light-industrial area that has little in terms of nature and habitat.

With respect to Night Lighting and Noise, the Commission finds that the Applicants have offered to limit lighting to that required by code (which will be downward shielded) and that security lighting would be motion-sensitive. With respect to noise the Commission notes that mill work will take place inside the building but that this is appropriately located in a light industrial area.

With respect to Energy and Sustainability, the Commission finds that the project will include use of highly efficient insulation, on demand hot water, and a highly efficient furnace.

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 Traffic and Transportation, the Commission finds that the project should not have a significant impact on delays in the area. The Commission notes that the proposal adds a curb cut to a road that may become part of a connector road network.

With respect to Scenic Values, Character, and Identity: The Commission finds that the Applicant has agreed to add landscaping and to make the site attractive and that the project will be a significant improvement to the area.

With respect to the Impact on Abutters, the Commission finds that the project is in an area zoned for the proposed use and that in some respects will be an improvement to neighborhood.

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

The Commission finds that the project is providing an apartment for employees and that is a benefit.

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).

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).

The Commission notes that the project is in the B-2 Commercial Zoning District which specifically allows a mix of business and residential.

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).

The Commission notes that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991.

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 such as those relating to wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of 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 as noted previously in section A8 of this decision.

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 finds that the project is consistent with the B-2 Commercial District Regulations in Tisbury.

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 site is not located within Districts 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 February 21, 2008 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 on March 8, 2007.

- Voting in favor: Jim Athearn; John Breckenridge; Christina Brown; Pete Cabana; Chris Murphy; Jim Powell; Doug Sederholm; Linda Sibley; Richard Toole;
- Voting against: None
- Abstentions: Mimi Davisson; Kathy Newman; Susan Shea

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 February 21, 2008 and was approved by vote of the Commission on April 3, 2007.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order 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. If the Commission 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 attorney's fees and costs incurred in obtaining judicial relief.

1 Exterior Lighting

- 1.1 As offered by the Applicant, exterior lighting on the building shall be limited to that required by code and shall be downward shielded to prevent direct light from escaping the property.
- 1.2 As offered by the Applicant, any security lighting will be motion sensitive.

2 Affordable Housing

- 2.1 As offered by the Applicant, the two bedroom apartment on the second floor will be used exclusively as a year round rental apartment, preferably for the use of employees of the resident business.

3 Landscaping

- 3.1 As offered by the Applicant, a final landscaping plan showing plant species (to be local and indigenous) and locations is to be submitted for the review and approval of LUPC before a Certificate of Occupancy is issued.
- 3.1a The Applicant will landscape the frontage of both lots on Evelyn Way, such landscaping to be completed within three years of the issue of this Decision.
- 3.2 As offered by the Applicant, all fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.
- 3.3 As offered by the Applicant, the Beech tree that currently stands in the grove at the front of the property will be transplanted to the northwest corner of the M.V. Electric side of the property.
- 3.4 If the Beech tree should not survive the transplantation the Applicant will replace it.

4 Substantial Alterations

- 4.1 This approval is contingent on the development proceeding as proposed; any substantial change of the proposed development as submitted with the application shall revoke this approval.

All of the above offers shall be binding on 44 Evelyn Way, Tisbury Map 22-C Lot 7.1 (0.53 acres), and its successors and assigns, and shall run with the land.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant 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 Town' building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following conditions in this Decision have been satisfied: 1.1, 1.2, 3.1, 3.3, and 4.1.

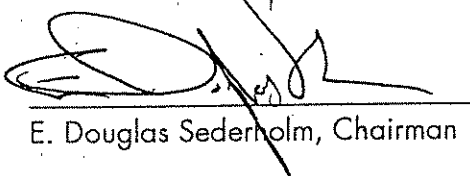
6.2 Notice of Appellate Rights

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 Tisbury 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 contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. 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

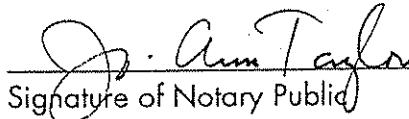

E. Douglas Sederholm, Chairman

4-10-08
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 10th day of April, 2008, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared E. Douglas Sederholm, proved to me through satisfactory evidence of
identity, which was/were driver's license 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

Jo-Ann Taylor
Printed Name of Notary

My Commission Expires February 11, 2011

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: 4-11-08

Deed - Book 1148, page 188