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## **Decision of the Martha's Vineyard Commission DRI 595 – 21 Kennebec Avenue**

Date: October 5, 2006  
To: Board of Selectmen, Town of Oak Bluffs, MA  
From: Martha's Vineyard Commission  
Subject: Development of Regional Impact #595  
21 Kennebec Avenue  
Project: New Mixed Use Building at 21 Kennebec Avenue  
Owner: Alan Schweikert  
Applicant: Alan Schweikert  
Project Location: 21 Kennebec Avenue, Oak Bluffs, MA Map 9 Lot 20.1

### **1. SUMMARY**

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The Martha's Vineyard Commission (the Commission) hereby approves the granting of permits for the development as submitted in the application of Alan Schweikert for a project located at 21 Kennebec Avenue, Oak bluffs, MA Map 9 Lot 20.1.

This Decision is rendered pursuant to a vote of the Commission on September 21, 2006. The permit-granting authorities of the Town of Oak Bluffs 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**

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The project was referred to the Commission by the Board of Selectmen of the Town of Oak Bluffs, 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, Section 3.101a. On July 17, 2006 at LUPC the Applicant, Alan Schweikert, agreed to proceed directly to the public hearing process and be reviewed as a Development of Regional Impact and was reviewed as such by the Martha's Vineyard Commission. 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.

Hearings: A duly noticed public hearing on the Application was conducted by the Commission on August 10, 2006 at the Stone Building in Oak Bluffs, MA pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 and was closed the same night.

Description: The proposal is to complete a 3-story, 6-unit, 5,629 square foot mixed-use building at 21 Kennebec Avenue. The two ground floor units of 888 square feet are intended for tourist-based retail and the four units on the second and third floor are intended for residential. The second floor apartments will have two-bedrooms each within 963 square feet each. The third floor apartments will have one-bedroom each within 963 square feet each with cathedral ceilings.

The Plan: The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- "Site Plan, First FLR Plan & Code Review", 21 Kennebec Avenue, Oak Bluffs, MA., consisting of one 24" X 36", sheet number A-01 prepared by Sullivan O'Conner Architects, P.O. Box 989, Oak Bluffs MA, 02557 – April 10, 2006
- "Floor Plans", 21 Kennebec Avenue, Oak Bluffs, MA., consisting of one 24" X 36" sheet, number A-02 prepared by Sullivan O'Conner Architects, P.O. Box 989, Oak Bluffs MA, 02557 – April 10, 2006
- "Exterior Elevations", 21 Kennebec Avenue, Oak Bluffs, MA., consisting of one 24" X 36" sheet, number A-03 prepared by Sullivan O'Conner Architects, P.O. Box 989, Oak Bluffs MA, 02557 – April 10, 2006

### **3. FINDINGS AND CONCLUSIONS**

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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.

Based on the record and testimony presented therein, the Commission makes the following findings 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 project is a downtown mixed-use infill building connected to the sewer that voluntarily subjected itself to Historic Committee Review on a site that used to be a private parking lot. The Commission notes that this project, while slightly decreasing the number of parking spots, actually improves the access and circulation to other public parking lots.

**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 wastewater and groundwater, the Commission finds that the project will be connected to the Town Sewer and is approved for 470 gallons a day by the Town.

With respect to open space, natural community and habitat, the Commission finds that the project is a downtown infill project that subscribes to the principles of Smart Growth by developing already urban sites near services and transit. The Commission notes that the project, after the landscaping plan is approved by the LUPC, is likely to increase the amount of vegetation and pervious surfaces and create a safer pedestrian environment.

With respect to night lighting and noise, the Commission finds that the plan is to have minimal, low-level, downward-shielded lighting on timers.

With respect to energy, the Commission finds the building exceeds the requirements of Chapter 13 "Energy Conservation" of the Massachusetts Building Code by a significant amount.

**A3 The Commission finds that the proposed development would have a beneficial 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 would have a negligible impact on regional traffic due because most of the trips to the commercial spaces are expected to be "pass-by" and mostly by people walking from other parts of downtown. It was also noted that the project would have a positive impact on the layout of adjacent parking areas.

With respect to scenic values, the Commission finds that the front of the building is built along the line of other buildings on the street. The Commission notes that the design of the building

has been developed in consultation with the Historical Committee and can be described as Oak Bluffs Victorian with a Mansard roof.

With respect to character and identity, the Commission notes that the design of the building is in character with the historic and existing character of downtown.

With respect to the impact on abutters, the Commission finds that the site is in the midst of an existing business district and that new residents should be aware of existing noise and odors. The Commission notes that the project has improved the sidewalk, public vehicular circulation, and that the applicant is planning on installing some site furniture on public property abutting the property.

**A4 The Commission finds that the proposed development would have a positive 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 proposed to have a positive impact on the supply of moderate income housing by selling the residential condominium units priced in the mid - \$300,000 range which would provide ownership options for those who earn between 140 - 150% of the Area Median Income. The Commission notes that the building will have a condominium association that will have covenants that control the type of rentals. The Commission notes that the Applicant has offered to contribute to an affordable housing organization.

**A5 The Commission finds that the proposed development would have no significant impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).**

The Commission finds that this development will have a limited impact on the need for and cost of municipal services.

**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).**

The Commission notes that this development will improve access to publicly owned parking lots.

**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).**

**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.

- I-3. "Encourage efforts to diversify the Island economy within the quality and character of Martha's Vineyard"
- I-22 "Keep existing business districts vital and workable."

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.

**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 has reviewed this development under the provisions of the Martha's Vineyard Commission Act, Chapter 831, including section 14[c], which requires that the Commission find that "the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation". The Commission notes that this project received a ZBA Special Permit for relief from height restrictions.

**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 in any DCPC's.

## **4. CONDITIONS**

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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.

### **1. Landscaping**

- 1.1 A final Landscaping Plan shall be submitted to and is subject to the approval of LUPC before a Certificate of Occupancy is issued.
- 1.2 As offered by the applicant, no fertilizer shall be used on the property, other than slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.

### **2 Affordable Housing**

- 2.1 As offered by the applicants, \$3,629 shall be provided to the Dukes County Regional Housing Authority, in order to off-set the likely impacts on affordable housing, pursuant to the Martha's Vineyard Commission Affordable Housing Policy.

### **3. Lighting**

- 3.1 As offered by the applicant, only minimal, low-level, downward shielded, exterior lighting shall be installed.

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.

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The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any local development permits which may be required by law. This Decision is written consistent with the vote of the Commission: September 21, 2006 and was approved by vote at the Commission meeting of October 5, 2006.

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 Chilmark Town Clerk. 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.

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Linda B. Sibley, Chairman

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Date

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Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned Notary Public, personally  
appeared \_\_\_\_\_, proved to me through satisfactory evidence of  
identity, which was/were \_\_\_\_\_ 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

\_\_\_\_\_  
Printed Name of Notary  
My Commission Expires \_\_\_\_\_