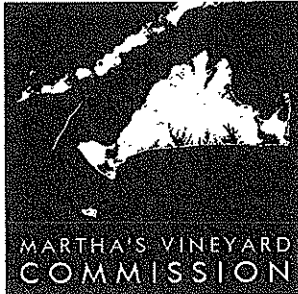




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## **Decision of the Martha's Vineyard Commission**

### **DRI 604 – 44 North Water St. Realty Trust**

#### **1. SUMMARY**

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Referring Board: Planning Board, Town of Edgartown, MA

Subject: Development of Regional Impact #604  
44 North Water Street Realty Trust

Project: Division of Map 20 D Lots 220 & 221 into seven lots.

Owner: 44 N. Water St. Realty Trust; Kevin P. Kerr, Trustee

Applicant: Kevin P. Kerr and Tim O'Connell

Applicant Address: 546 E. Broadway, South Boston, MA 02127

Project Location: Simpson's Lane, Map 20D Lots 220 & 221, Edgartown, MA

Description: The proposal is to subdivide two lots (Edgartown Map 20D Lots 220 & 221) into seven lots, each meeting minimum lot size and frontage requirements. No work or change of use is proposed by the applicants, but the application includes a request for approval of some future development. Five of the proposed seven lots have buildings on them leaving two empty lots. A single-story building of 8,306 square feet with a bar/restaurant and 20 guest rooms was demolished earlier this year and is included in this application.

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 June 21, 2007.

Written Decision: This written decision was approved by a vote of the Commission on July 5, 2007.

The permit-granting authorities of the Town of Edgartown 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 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 May 16, 2007 by the Planning Board of the Town of Edgartown, 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 3.201, division of land in a business district, a mandatory referral. The project should have also been referred under Section 3.402, demolition of over 2,000 square feet in a commercial district; therefore, the demolition was also reviewed.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, June 1, 2007.

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 June 14, 2007, and was continued on June 21, 2007 and closed that day.

### **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 "Form A Plan of Land Located at 30 Simpson's Lane & 44 North Water Street Edgartown, MA", consisting of one 24" by 36" sheet of existing and proposed lot lines and building locations, Scale: 1" = 20', prepared by Boston Surveying, Inc., Unit C-4 Shipways Place, Charlestown, MA 02129, February 2, 2007.
- P2 "Form A Plan of Land Located at 30 Simpson's Lane & 44 North Water Street Edgartown, MA", consisting of one 24" by 36" sheet of existing and proposed lot lines and building locations with colored magic markers denoting demolished sections, existing buildings, and curb cuts, Scale: 1" = 20', prepared by Boston Surveying, Inc., Unit C-4 Shipways Place, Charlestown, MA 02129, February 2, 2007.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Edgartown Planning Board May 16, 2007
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, June 12, 2007 and revised June 16, 2007.
- E3. Photographs of the site, taken on June 14, 2007 by MVC staff members, Paul Foley and Mark London.
- E4. Letter from Anthony J. Bongiorno, dated June 12, 2007.

- E5. Letter from Anthony J. Bongiorno to the M.V. Gazette and M.V. Times, dated May 22, 2007.
- E6. Letter from James Westervelt, dated June 14, 2007.
- E7. Letter from Kevin Kerr, dated June 11, 2007.
- E8. Minutes of the Commission's Land Use Planning Committee meeting, June 4, 2007.
- E9. Minutes of the Commission's Public Hearing, June 14, 2007.
- E10. Minutes of the Commission's Continued Public Hearing, June 21, 2007.
- E11. Minutes of the Commission Meeting of June 21, 2007 – Deliberations and Decision.
- E12. Minutes of the Commission Meeting of July 5, 2007 – 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 Kevin Kerr and Tim O'Connell.
- Staff reports by Paul Foley, MVC DRI coordinator; and Mark London, Executive Director.
- Letters from 2 citizens of Martha's Vineyard noted above.
- Oral testimony from Town Boards: Roger Becker, Chairman of the Edgartown Planning Board.
- Oral testimony from Public: Claudia Kennedy of the Edgartown Board of Trade, and Carol Coulter.

## **3. FINDINGS**

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### **3.1 Project Description**

- The Subdivision of Edgartown Map 20D Lots 220 & 221 into seven ANR (Approval Not Required) lots.
- Each proposed lot meets minimum lot size and frontage requirements.
- No work or change of use is proposed by the applicants.
- The main buildings of the Shiretown Inn remain.
- The Hideaway Pub, Ciao Bella Restaurant, and a long series of motel rooms that were formerly a garage built in 1918 was demolished a few months ago. There were 8,306 sf in the entire structure that was demolished. Approximately 4,500 sf of this were the bar, restaurant, and kitchen).
- Five of the proposed seven lots have buildings on them leaving only two empty lots.
- The buildings on proposed Lots 6 and 7 are connected two-story buildings that were built in 1795 and comprise 5,367 sf of living space with a total of 17 bedrooms. The existing two-story building on proposed lot 2 was built in 1940, has 1,192 sf and 2 bedrooms. The existing two-story building on proposed lot 1 was built in 2003, has 1,496 sf and 4 bedrooms. The existing building on the proposed lot 4 was built in 1900 and has 1,509 sf.
- The Shiretown Inn was permitted for a total of 54 guest rooms.

### **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 the new division of this land and its use to replace the previous uses and/or for single-family dwellings is an appropriate use for this property in the Edgartown business district. Any other development proposal would be subject to further review by the Martha's Vineyard Commission.

##### **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 any future development of this property would be connected to the Edgartown Wastewater Treatment Facility.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the property is in the downtown Historic District and Commercial District.

With respect to Night Lighting and Noise, the Commission finds that the approved development would be similar to what was there before, as well as single-family residences that would have little impact.

##### **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 pre-existing traffic generation was considerable and is unlikely to be surpassed.

With respect to Scenic Values, Character, and Identity: The Commission finds that the existing buildings are either historic structures or in the historic character of the downtown. Future buildings will be subject to review by the Edgartown Historic District Commission.

With respect to the Impact on Abutters, the Commission finds that the development of the site as approved would be similar to the impact of the previous structures.

**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 Applicants have offered to make a contribution to mitigate affordable housing and that some future developments may return to the Martha's Vineyard Commission for application of the Commission's Affordable Housing Policy.

It is noted that prior to demolition of the rooms, kitchen, bar, restaurant the applicant donated 20 rooms of linens, bedding, towels, clock radios, TVs, beds, bureaus, lamps, chairs, irons, ironing boards, ice buckets, glasses, pictures and decorating to the MV Boys and Girls Club representing an estimated replacement cost of at least \$1,000 per room, or \$20,000.

**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).**

The Commission finds that the development of this site as approved would have a similar impact to previous uses.

**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).**

**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 proposed lots each meet minimum lot size and frontage requirements. The Commission finds that the future development of the properties is subject to review by the Historic District Commission, the Planning Board and the Zoning Board of Appeals of the Town of Edgartown.

**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 any District of Critical Planning Concern (DCPC).

**4. DECISION**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on June 21, 2007 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 June 21, 2007.

- Voting in favor: James Athearn; John Breckenridge; Christina Brown; Peter Cabana; Chris Murphy; Katherine Newman; Susan Shea; Linda Sibley; and Paul Strauss.
- Voting against: None
- Abstentions: None

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 June 21, 2007 and was approved by vote of the Commission on July 5, 2007.

**5. 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.

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 DRI Review**

- 1.1 As offered by the Applicant, this approval applies to all the lots shown on the Plan, whether separately or jointly owned, by the present applicant or any future owner(s).
- 1.2 As offered by the Applicant, this approval allows the following uses of the lots and land on the Plan without further action (referral to, or modification of approval), by the MVC:
  - 1.2.1 Changes to the lot lines on the Plan which do not (i) change the number of lots, or (ii) change the size of any lot by more than 10% or reduce any lot to less than 5,000 square feet, or (iii) change the curb cuts to lots to the number (three on Simpson's Lane and one on North Summer Street) shown on the Plan
  - 1.2.2 Construction of bars and/or restaurants, totaling in the aggregate, no more than 4,500 square feet on Lots 4,5,6 and 7 or any combination of those lots.
  - 1.2.3 Construction of no more than 54 bedrooms in inns, hotels, or lodging houses on any of the lots, or any combination of lots, on the Plan.
  - 1.2.4 Construction of single-family houses on any lot, including usual and permitted accessory structures, except that the proposed construction of a guesthouse on any lot must be referred to the MVC.
  - 1.2.5 Construction by one owner (including affiliates) of one development encompassing all seven lots of either (1) multiple housing units with no more than 54 bedrooms or (2) a combination of hotel/inn and housing unit uses having no more than 54 bedrooms.
- 1.3 As offered by the Applicant, any changes to the Plan, or construction or development proposed on the property, not otherwise excluded from further action (referral to, or modification of approval) by the MVC by this decision, shall be required to be referred to the MVC for consideration of modification of this DRI approval; this includes, but is not limited to other business or commercial uses of any size, other changes to lot lines or curb cuts, and guesthouses.
- 1.4 As offered by the Applicant, if the Applicant wishes to convey all the land on the Plan, undivided, he may ask the MVC for a modification of the DRI, to be accompanied by a formal written surrender and cancellation of the present Plan in recordable form, to be effective upon recording of a modified DRI decision. The DRI decision for this Plan could then be modified by the MVC pursuant to a decision recorded in the Registry together with the original of the surrender of rights, such that neither the present Plan nor the original, present, DRI decision would have any further force or effect.

## **2 Affordable Housing**

- 2.1 As offered by the Applicant, at the earliest of (a) the time of the conveyance of each lot, or of one or more lots (i.e., recording of the deed) or (b) issuance of a building permit for each of the seven lots, a payment of \$9000 per lot (for a total of \$63,000 for all seven lots) shall be due and payable by owner or his successor(s) to the Dukes County affordable housing entity designated by the MVC. This payment shall constitute full satisfaction of any affordable housing requirement with respect to any commercial development on the lots.

- 2.2 As offered by the Applicant, upon proof of such payment, the Commission shall issue a certificate of compliance with this Decision; applicable to the specific lot or lots with respect to which such payment has been made. Each such buyer, including any successors in interest to such buyer, will be subject to, and solely responsible for meeting any applicable legal requirements (including referral under the DRI checklist) relating to the MVC, if any, based solely on the actual development proposed by such new owner for his/her lot, and without regard to what other buyers may be proposing as development on their lots; notwithstanding the foregoing, if a development with multiple housing units is referred to the MVC under the DRI Checklist guidelines because any one owner or entity having common ownership or control of such lots proposes to create 10 or more dwelling units on some combination of such lots, then with respect to affordable housing, that owner will be required to dedicate one unit to an Island affordable housing organization for each 10 units created (per 2007 MVC Affordable Housing Policy). In particular, the municipality's decision whether to refer such proposed development to the MVC shall be based on whether the proposed development meets the standards requiring referral under the DRI checklist then in force.
- 2.3 As offered by the Applicant, as a further affordable housing commitment, no building now standing on the site shall be demolished or moved off the site unless first offered to an appropriate agency as a donation for affordable housing off-site.

## **6. CONCLUSION**

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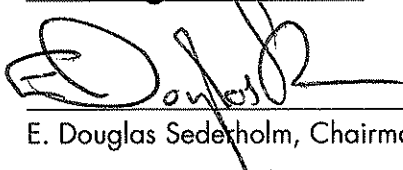
### **6.1 Permitting from the Town**

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

### **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 Edgartown Town Clerk.

### **6.3 Signature Block**

  
 E. Douglas Sederholm, Chairman

7-24-07  
 Date

### **6.4 Notarization of Decision**

Commonwealth of Massachusetts  
 County of Dukes County, Mass.

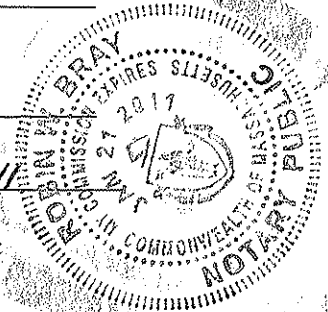
On this 24<sup>th</sup> day of July, 2007, before me,  
ROBIN W. BRAY, the undersigned Notary Public, personally  
 appeared E. DOUGLAS SEDERHOLM, proved to me through satisfactory evidence of identity,



which was/were my PERSONAL KNOWLEDGE 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, AS CHAIRMAN AS AFORESAID.

R. W. Bray  
Signature of Notary Public

ROBIN W. BRAY  
Printed Name of Notary  
My Commission Expires 01/21/2011



**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: 7-24-09

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Attest:  
Jeanne E. Powers Register