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## Decision of the Martha's Vineyard Commission DRI 607 – Moujabber Addition

### 1. SUMMARY

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- Referring Board: Board of Selectmen, Town of Oak Bluffs, MA
- Subject: Development of Regional Impact #607  
Moujabber Addition
- Project: Addition to an existing 5-bedroom house.
- Owner: Joseph Moujabber
- Applicant: Joseph Moujabber
- Applicant Address: 10 Upper Douglas Lane, Oak Bluffs, MA, 02557
- Project Location: 10 Sea View Avenue Extension, Oak Bluffs Map 9 Lot 50 (.18 acres)
- Description: Addition to an existing house. The applicant proposes to demolish the three-story partially completed accessory structure and build an addition to the back of the main house. The existing five-bedroom main house is 2,074 sf of living space (2,617 gross sf) and the proposed addition would be 1,266 sf of living space (1,403 gross sf) for a total five-bedroom house size of 3,340 sf of living space (4,020 gross sf).
- 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 July 10, 2008.
- Written Decision: This written decision was approved by a vote of the Commission on July 23, 2008.

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 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 13, 2007 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, Sections 3.101a, a discretionary referral. On November 1, 2007 the Martha's Vineyard Commission held a duly noticed public hearing to decide whether or not to accept the discretionary referral and voted to accept the referral that the project should be reviewed as a Development of Regional Impact by the Martha's Vineyard Commission.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, April 4, 2008.

Hearings: The Commission held three public hearings 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 April 17, 2008, that was continued to May 15, 2008; that was continued to June 12, 2008 and closed on that date.

### **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 "First Floor Plan: Proposed Addition at the Moujabber Residence", A1, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P2 "Second Floor Plan: Proposed Addition at the Moujabber Residence", A2, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P3 "Roof Plan: Proposed Addition at the Moujabber Residence", A3, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P4 "Front Elevation: Proposed Addition at the Moujabber Residence", A4, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P5 "Left Side Elevation: Proposed Addition at the Moujabber Residence", A5, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.

- P6 "Right Side Elevation: Proposed Addition at the Moujabber Residence", A6, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P7 "Rear Elevation: Proposed Addition at the Moujabber Residence", A7, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/4" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P8 "Existing Site Plan: Proposed Addition at the Moujabber Residence", P1, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/8" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P9 "Site Plan: Proposed Addition at the Moujabber Residence", P2, consisting of one 24" x 36" sheet page of floor plans, Scale: 1/8" = 1'-0", prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P10 "Streetscape at Sea View Extension", S1, consisting of one 24" x 36" sheet page of floor plans, prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P11 "Streetscape at Pasque Avenue", S2, consisting of one 24" x 36" sheet page of floor plans, prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P12 "Perspective: Sea View Avenue Extension – Looking South ", consisting of one 24" x 36" sheet page of floor plans, prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.
- P13 "Perspective: View from Steamship Authority Dock", consisting of one 24" x 36" sheet page of floor plans, prepared by Architectural Innovations, Inc., P.O. Box 2056, Cotuit, MA 02635, May 28, 2008.

**2.4 Other Exhibits**

- E1. Referral to the MVC from the Oak Bluffs Board of Selectmen, September 11, 2007.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, November 1, 2007; that was revised November 19, 2007; and January 30, 2008; and April 16, 2008; and May 15, 2008.
- E3. Photographs of the site, taken on October 3, 2007 by MVC staff member Paul Foley.
- E4. Photographs of the site taken Belleruth Naparstek.
- E5. Photographs of the site submitted by Stephanie Kiefer at the April 17, 2008 public hearing.
- E6. Letter from A. Levy, dated February 15, 2008.
- E7. Letter from A. Read, dated February 19, 2008.
- E8. Letter from B. Levy, dated February 20, 2008.
- E9. Letter from A. Naparstek, dated February 15, 2008.
- E10. Letter from A. Wysocki, dated April 17, 2008.

- E11. Letter from E. Shenholm, dated April 18, 2008.
- E12. Letter from T. Turman, dated May 2, 2008.
- E13. Letter from D. Ruskin, dated May 27, 2008.
- E14. Letter from A. Naparstek, dated June 19, 2008.
- E15. Letter from S. Kiefer, dated June 19, 2008
- E16. Written Testimony from Matt Iverson June 19, 2008
- E17. Minutes of the Commission's Land Use Planning Committee meeting, October 15, 2007.
- E18. Minutes of the Commission's Land Use Planning Committee meeting, November 19, 2007.
- E19. Minutes of the Commission's Land Use Planning Committee meeting, March 3, 2008.
- E20. Minutes of the Commission's Land Use Planning Committee meeting, June 23, 2008.
- E21. Minutes of the Commission's Public Hearing of the Discretionary Referral, November 1, 2007.
- E22. Minutes of the Commission's Public Hearing, April 17, 2008.
- E23. Minutes of the Commission's Continued Public Hearing, May 15, 2008.
- E24. Minutes of the Commission's Continued Public Hearing, June 12, 2008.
- E25. Minutes of the Commission Meeting of July 10, 2008 – Deliberations and Decision.
- E26. Minutes of the Commission Meeting of July 24, 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 Matt Iverson (Lawyer) and Peter Pometti (Architect).
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Letters from citizens of Martha's Vineyard.
- Oral testimony from Town Boards or members of Town Boards:
- Oral testimony from Public: Stephanie Kiefer; Charlie Miner; Don Gregory; Jonathan Revere; Patrick King; Abe Naparstek; James Cippolo; Doug Smith; Jason Lew; Steve Auerbach; Bill McGrath; Valerie Naparstek; Ginny Gregory; Doug Ruskin; Buddy Bettencourt; Peter Clemente, Belleruth Naparstek,

## **3. FINDINGS**

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### **3.1 Project Description**

- The applicant proposes to demolish the three-story partially completed accessory structure and build an addition to the back of the main house.

- The existing five-bedroom main house is 2,074 sf of living space (2,617 gross sf) and the proposed addition will be 1,266 sf of living space (1,403 gross sf) for a total five-bedroom house size of 3,340 sf of living space (4,020 gross sf).
- The proposed addition will be 61% the size of the existing main house in living space (54% in gross sf).
- The addition will be 35% of the total new house in gross square feet.

### **3.2 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.

### **3.3 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 this addition to the house in the Copeland District of Critical Planning Concern and the Cottage City Historic District harmonizes with the character of the area and would have an acceptable impact on public views.

##### **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 wastewater and water supply are hooked up to the Town systems so there will be little impact. The Commission notes that there would be more hard surface so there would be slightly more stormwater runoff.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project reduces the open space slightly.

With respect to Night Lighting and Noise, the Commission finds that the project will minimize the light escaping the property by having exterior lights downward shielded. The Commission notes that the outside deck will increase the possibility of noise.

With respect to Energy and Sustainability, the Commission finds that the addition will be built to modern standards of insulation and tightness.

**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 have no impact in that the use of the property as a five-bedroom single-family residence will not change.

With respect to Scenic Values, Character, and Identity, the Commission finds that the project will have a minimal impact on public views from roads and the water. The Commission notes that the project will be visible from several windows in some neighbors' houses impacting their scenic views. The Commission notes that the proposal is within keeping of the neighborhood in terms of the American Craftsman design, roof pitch, and details. The Commission notes that the scale is larger but appears to fit with the surrounding neighborhood.

With respect to the Impact on Abutters, the Commission finds that there will some loss of views and a sense of openness from back yards, but these are reasonable in relation to homeowners' rights to expand their houses within reasonable guidelines.

With respect to the Construction Process, the Commission finds that the Applicant has submitted offers defining the demolition and construction process including drainage and erosion controls.

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

**A5 The Commission finds that the proposed development would have minimal 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 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, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments 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 notes that the project conforms to zoning regulations, with the clarification noted in section 3.4-D.

**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 notes that the project conforms with the Copeland DCPC regulations with the clarification that the reference to the blocking of private of views is taken as a relative as opposed to an absolute restriction.

#### **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 July 10, 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 July 10, 2008.

- Voting in favor: James Athearn; John Breckenridge; Christina Brown; Mimi Davisson; Chris Murphy; Jim Powell; Doug Sederholm; Susan Shea; Linda Sibley.
- 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 July 10, 2008 and was approved by vote of the Commission on July 24, 2008.

## **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 Wastewater, Groundwater And Stormwater Management**

- 1.1 As offered by the Applicant, the Applicant shall install at ground level at all roof overhangs 24" W x 18" D gravel drain with 4" diameter perforated pipe sloped to gravel filled drywells located on site as per plans.
- 1.2 As offered by the Applicant, the Applicant shall install French drains at both driveway terminations to catch and retain driveway runoff; both French drains shall slope to gravel filled drywells located on site as per plans.
- 1.3 As offered by the Applicant, the finished grade around the new addition shall match up with the existing house grading and the Applicant shall pitch onsite water to Pasque and North Bluff Avenues.

### **2 Use**

- 2.1 As offered by the Applicant, the entire structure will be a five-bedroom, single-family home.
- 2.2 As offered by the Applicant, the lowest level of the proposed addition (the "Addition") shall be used as a garage.
- 2.3 As offered by the Applicant, the Applicant shall prohibit the use of the property for employee housing.

### **3 Architecture**

- 3.1 As offered by the Applicant, the architectural details and materials shall match the details of the existing house.

### **4 Landscaping**

- 4.1 As offered by the Applicant, a final landscape plan shall be submitted for the review of and is subject to the approval of the LUPC.
- 4.2 As offered by the Applicant, primarily native and low-maintenance plants shall be used in the areas proposed for new landscaping, to minimize the need for fertilization and watering.



- 4.3 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.

## **5 Exterior Lighting**

- 5.1 As offered by the Applicant, a final lighting plan shall be submitted for the review of and is subject to the approval of the LUPC.
- 5.2 As offered by the Applicant, exterior lighting on buildings shall be limited to that required by code, any security lighting shall be motion-sensitive, and all exterior lighting shall be downward-shielded to prevent direct light from escaping the property.

## **6 Construction**

- 6.1 As offered by the Applicant, the demolition and construction period shall occur between Columbus Day weekend and April 30.
- 6.2 As offered by the Applicant, erosion and sediment control measures constructed of hay bales and silt fence shall be in place and functional before demolition of existing garage and construction of new addition begin and must be constructed and maintained throughout the demolition and construction period.
- 6.3 As offered by the Applicant, the existing frame portion of the garage shall be dismantled by hand with all useable parts to be stored on site in a designated construction staging area. All other remaining construction materials shall be removed from the site.
- 6.4 As offered by the Applicant, the existing foundation and concrete slab of the garage shall be demolished with large equipment and shall be removed from the site.
- 6.5 As offered by the Applicant, the existing one-story portion of the house shall be dismantled by hand and removed for the site.
- 6.6 As offered by the Applicant, the existing foundation and concrete slab of the dismantled portion shall be demolished with heavy equipment and shall be removed from the site.
- 6.7 As offered by the Applicant, the addition foundation shall be excavated with soil from the excavation to be used to fill the hole left by the removed garage foundation. The soil shall be graded to match the existing grades on site.
- 6.8 As offered by the Applicant, the existing garage driveway shall remain and be used as the construction staging entrance. The construction staging area is only intended for the construction process and all items shall be removed from the site when the building is complete.
- 6.9 As offered by the Applicant, the construction process on the project will start and be completed as per schedule and as per plans.
- 6.10 As offered by the Applicant, upon final landscaping and permanent site stabilization, the Applicant shall remove the silt fence and hay bales and all other temporary erosion control measures.
- 6.11 All construction materials and associated items shall be removed from the site within thirty (30) days after the Certificate of Occupancy has been issued.

## **7 Further Conditions**

7.1 The design of the building may be refined, modified, or further restricted if so required by boards of the Town of Oak Bluffs, provided the result is not higher, wider, or longer than the plan approved by the Martha's Vineyard Commission and provided the basic architectural characteristics (roof slope, materials, window and door proportions, are maintained) are adhered to. Any such design revision shall be submitted to and is subject to the approval of the MVC Land Use Planning Committee.

## **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 Oak Bluffs Officers and Boards for any local development permits which may be required by law.

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. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

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; 1.3; 1.5; 2.1, 2.2, 3.1; 4.1; 4.2; 5.1; 5.2; 6.1 to 6.10, 7.1.

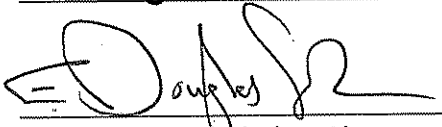
### **6.2 Notice of Appellate Rights**

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 Oak Bluffs 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

8-6-08  
Date

**6.4 Notarization of Decision**

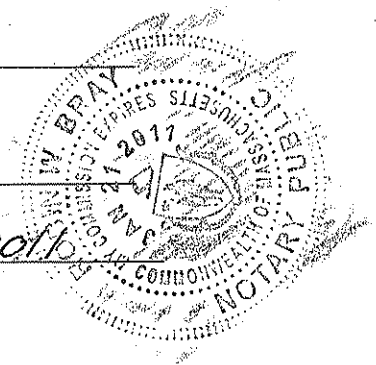
Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 6<sup>TH</sup> day of AUGUST, 2008, 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.

R. W. Bray  
Signature of Notary Public

ROBIN W. BRAY  
Printed Name of Notary

My Commission Expires 01/21/2010



**6.5 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: \_\_\_\_\_

Deed – Book \_\_\_\_\_, page \_\_\_\_\_

Attest:  
Deanne E. Powers Register