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Decision of the Martha's Vineyard Commission

DRI 613 – Doug Hoehn Building

1. SUMMARY

- Referring Board: Planning Board, Town of Tisbury, MA
- Subject: Development of Regional Impact 613
Doug Hoehn Building
- Project: To divide two commercial lots into three commercial lots, build one two-story commercial building (2,688 sf), and set master plan guidelines for the two remaining lots
- Owner: Doug Hoehn (Pending Permits); current owner is Raymond DeBettencourt
- Applicant: Doug Hoehn
- Applicant Address: P.O. Box 339, 97 State Road, Vineyard Haven, MA 02568
- Project Location: DeBettencourt Way, Tisbury Map 23A Lot 19.3, 19.4, (1.11 acres)
- Description: To divide two commercial lots into three commercial lots, build one two-story commercial building (2,688 sf), and set master plan guidelines for the two remaining lots. The building that is proposed would house a surveying/engineering firm (10 employees) on the main level and two smaller office spaces on the lower level with a one-bedroom staff apartment. The applicant would also like to establish parameters and guidelines for development, layout, traffic flows, and wastewater flows for the remaining two lots.
- 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 5, 2008.
- Written Decision: This written decision was approved by a vote of the Commission on June 26, 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 April 1, 2008 by the Building Inspector 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, 3.301a, and 3.401d and was reviewed as a DRI 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, May 9, 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 April 18, 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 "DRI Application (Booklet) for Douglas R. Hoehn & Schofield, Barbini & Hoehn Inc.", consisting of 31 pages including Project Description; Energy Policy; Traffic Impacts; Affordable Housing; Water Quality; Locus Map; Existing and proposed plans; Site Plan Lot A; Building Plans and Perspectives; 3 Lot Division Plan; Preliminary Master Plan; and Preliminary Access Plans, prepared by Doug Hoehn of Schofield, Barbini, and Hoehn, Inc., State Road, Vineyard Haven, MA, March 26, 2008.
- P2 "Site Plan: Tisbury, Mass.", consisting of one 24" x 36" page of site plan (Scale: 1" = 20'), prepared by Schofield, Barbini, and Hoehn, Inc., State Road, Vineyard Haven, MA, May 1, 2008.
- P3 "S.B.H. Office - 1", consisting of one 8.5" x 11" front elevation of proposed office building, prepared by Sullivan O'Connor Architects, Inc., P.O. Box 989, Oak Bluffs, MA 02557, March 10, 2008.
- P4 "S.B.H. Office - 2", consisting of one 8.5" x 11" perspective sketch of proposed office building, prepared by Sullivan O'Connor Architects, Inc., P.O. Box 989, Oak Bluffs, MA 02557, March 10, 2008.
- P5 "S.B.H. Office - 3", consisting of one 8.5" x 11" side elevation of proposed office building, prepared by Sullivan O'Connor Architects, Inc., P.O. Box 989, Oak Bluffs, MA 02557, March 10, 2008.
- P6 "S.B.H. Office", consisting of one 8.5" x 11" 4 elevations of proposed office building, prepared by Sullivan O'Connor Architects, Inc., P.O. Box 989, Oak Bluffs, MA 02557, March 10, 2008.
- P7 "S.B.H. Office", consisting of one 8.5" x 11" Floor Plans of proposed office building, prepared by Sullivan O'Connor Architects, Inc., P.O. Box 989, Oak Bluffs, MA 02557, March 10, 2008.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector April 1, 2008.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, 2008-05-01.
- E3. Photographs of the site, taken May 1 by MVC staff member Paul Foley.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, April 7, 2008.
- E5. Minutes of the Commission's LUPC Post Public Hearing Review meeting, May 19, 2008.
- E6. Minutes of the Commission's Public Hearing, May 1, 2008.
- E7. Minutes of the Commission Meeting of June 12, 2008 – Deliberations and Decision.
- E8. Minutes of the Commission Meeting of June 26, 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 Doug Hoehn
- Staff reports by Paul Foley (DRI Coordinator) and Mark London (Executive Director).

3. FINDINGS

3.1 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.

3.2 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 is an appropriate proposal within the B-2 Commercial District.

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 with the offers relative to wastewater, the project will have a minimal adverse impact. The Commission notes that the Upper State Road area in Tisbury is identified as an area for future growth but that the area is mostly in a nitrogen-sensitive watershed that is not connected to the Town sewer (though nearby). The Commission hopes that an overall solution to the wastewater issues in this area will be developed and offers its assistance to the Town to resolve this important issue. The Commission recognizes that by denitrifying the wastewater from the abutting property (Map 23 lots 19 and 19.2), based on treatment of six bedroom equivalent flow, the Applicant will exceed the removal of nitrogen required to meet the Commission's Water Policy (MVC Policy for DRI Review – Water Quality, as amended February 15, 2007) allowance for his property.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the site had been completely cleared by the previous owner. The Commission also finds that the property is zoned for business and that there is not much undeveloped business-zoned land left in town. The Commission notes that the property abuts the Town cemetery and that there should be appropriate vegetative screening to ensure a peaceful and natural setting.

With respect to Night Lighting and Noise, the Commission finds that the proposal will be a primarily daytime use and that lighting will be minimal.

With respect to Energy and Sustainability, the Commission finds that the proposal incorporates a number of energy saving efficiencies and may include solar panels.

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 proposal will have a limited impact on vehicular trip generation. The Commission notes that the Applicant has presented a number of alternative access plans and is working with abutters to create a safer access for the area onto State Road.

With respect to Scenic Values, Character, and Identity: The Commission finds that the proposed building is attractive and with appropriate screening will be an improvement over the existing clear cut situation.

With respect to the Impact on Abutters, the Commission finds that the site is surrounded by similar uses on one side and by the cemetery on the other side.

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 notes that the Applicant is supplying a staff apartment.

A5 The Commission finds that the proposed development would have beneficial impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission notes that the proposal will add to the tax base of the Town.

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.

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 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 June 5, 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 June 5, 2008.

- Voting in favor: James Athearn; John Breckenridge; Christina Brown; Peter Cabana; Mimi Davisson; Chris Murphy; Jim Powell; Doug Sederholm; Susan Shea; Linda Sibley; Paul Strauss; and Richard Toole.
- Voting against: No one

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 5, 2008 and was approved by vote of the Commission on June 26, 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 Landscaping

- 1.1 As offered by the Applicant, the Applicant shall submit a final landscaping plan showing plant species and locations for the review and approval of LUPC before construction begins.
- 1.2 As offered by the Applicant, the applicant shall coordinate with the cemetery commissioners to create a planted buffer along the common property line with the cemetery that is mutually acceptable to the applicant and the cemetery commissioners and will incorporate the buffer planting in the landscape plan.
- 1.3 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.
- 1.4 As offered by the Applicant, all landscaping plans shall use best management practices.

2 Exterior Lighting

- 2.1 As offered by the Applicant, all exterior lighting on buildings shall be limited to that required by code and security lights shall be on motion detectors.
- 2.2 As offered by the Applicant, landscape lighting shall be installed as depicted on the landscape plan and shall extend no more than three (3) feet above the ground.
- 2.3 As offered by the Applicant, any security lighting shall be motion sensitive.

- 2.4 As offered by the Applicant, all exterior lighting will be downward shielded to prevent direct light from escaping the property.
- 2.5 As offered by the Applicant, a final lighting shall be submitted to and is subject to the approval of LUPC before construction begins.

3 Energy

- 3.1 As offered by the Applicant, the Applicant shall work with an insulation consultant and contractor to design and install a system of cellulose and high-density foam insulation and venting.
- 3.2 As offered by the Applicant, the architects for the applicant, Sullivan & O'Connor, shall incorporate energy-efficient windows and doors that exceed the requirements in the Mass. Building Code and utilize techniques outlined in the EnergyStar building program.
- 3.3 As offered by the Applicant, the building shall have energy-efficient lighting, such as compact fluorescents, wherever possible.
- 3.4 As offered by the Applicant, the building shall have tankless (on-demand) hot water units.
- 3.5 As offered by the Applicant, the building shall have a high efficiency heating and air conditioning system.
- 3.6 As offered by the Applicant, thermostats will be put on timers to save heating and cooling costs when the building is unoccupied.
- 3.7 As offered by the Applicant, the building has been oriented to take advantage of southern exposure and the applicant is proposing an 8 panel Grid-Tied Solar Electric System, if it is determined that it is economically feasible to do so.

4 Traffic

- 4.1 As offered by the Applicant, the applicant is offering, at his own expense, to reconfigure two access points onto State Road into one in order to increase safety and enhance the aesthetics of the area. This improvement is contingent upon the agreement of several parties, and cannot be assured. The applicant agrees to make a good-faith effort to accomplish this improvement. Otherwise, the access to these properties will continue to be over their legal access of DeBettencourt Way.

5 Affordable Housing

- 5.1 As offered by the Applicant, there shall be a one-bedroom staff apartment in the lower level. If staff housing is not needed then the apartment will be rented on a year-round or seasonal basis - possibly for a seasonal worker. The apartment shall not be used on a weekly basis.
- 5.2 As offered by the Applicant, the applicant shall start an annual scholarship at the Martha's Vineyard Regional High School of \$2,000 for a graduating senior entering a college degree program in Surveying or Engineering. The scholarship will be paid in 2 segments - \$1,000 before the freshman year, and \$1,000 before the sophomore year. The first year, the donation will be \$1,000, and the donation will be \$2,000 per year after that. The first scholarship satisfies the affordable housing contribution for lot A, and that the next two scholarships satisfy the affordable housing contributions for lots B & C. The applicant hopes to continue this scholarship for many years after the initial three years, as long as he is financially able to do so.

6 Water Quality

- 6.1 As offered by the Applicant, the Applicant shall address the MVC Water Quality Policy in one of the following ways:

- Tie the buildings on all 3 lots into town sewer if town sewer becomes available prior to construction on these lots, or
 - If construction on the 3 lots commences prior to a town sewer being available, the applicant proposes to install de-nitrification units for the buildings on the 3 lots, and also offers to pay for the installation of a de-nitrification system for the abutting DeBettencourt property when a replacement system is proposed for that property (sized for a six bedroom residential flow), or
 - Make a reasonable monetary contribution to a study that contributes to improving the water quality of Tashmoo Pond or to a study of the feasibility of a town sewer system in the B2 district. The monetary contribution would be based on the difference in cost between the standard and denitrifying wastewater system to be approved by the MVC Land Use Planning Committee.
- 6.2 As offered by the Applicant, the Applicant shall create bio-retention areas, directing stormwater runoff to naturally vegetated areas and areas planted and mulched with native vegetation wherever possible.

7 Permitted Uses

- 7.1 The Applicant shall not rent or sell to any of the following types of businesses: fast food restaurant; hardware store; convenience store; bank; auto parts store; video store; and moped/car rentals without returning for the approval of the Commission.
- 7.2 No other business that generates more than 120 trips per day per 1000 square feet (based on the current Institute of Traffic Engineers Handbook) shall be allowed in the building.

8 Substantial Alterations

- 8.1 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 DeBettencourt Way, Tisbury Map 23A Lot 19.3, 19.4, (1.11 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 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. 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, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 5.1, 6.1, 6.2.

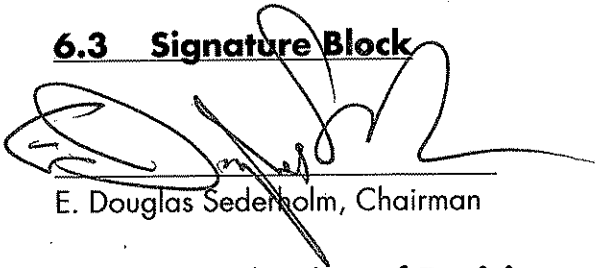
6.2 Notice of Appellate Rights

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

7-2-08
Date

6.4 Notarization of Decision

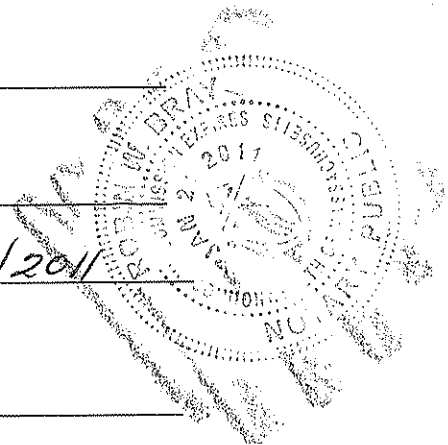
Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 2ND day of July, 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 01/21/2011



6.5 Filing of Decision

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

Deed - Book _____, page _____

Attest: Jeanne E. Powers Register