

orig



P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557
508.693.3453 • FAX: 508.693 7894
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG

Decision of the Martha's Vineyard Commission DRI 615 – Muckerheide Housing

1. SUMMARY

Referring Board: Planning Board, Town of Oak Bluffs

Subject: Development of Regional Impact #615
Muckerheide Community Housing

Project: To demolish the existing structure and build a single new 12,276 square foot building with twelve two-bedroom residential units.

Owner: Violet Realty Trust, Donald N. Muckerheide (Trustee)

Applicant: Violet Realty Trust, Donald N. Muckerheide (Trustee)

Applicant Address: P.O.B. 429, Oak Bluffs, MA 02557

Project Location: 114 and 116 Dukes County Ave. Oak Bluffs, MA Map 17 lots 22 and 24.1
(0.15 + 0.12 = 0.27 acres total)

Description: To demolish the entire existing structure and build a single new 12,276 sf (66' x 62' x 3 stories) building with twelve (784 sf) two-bedroom residential units to be sold for no more than \$350,000 per unit.

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 April 9, 2009.

Written Decision: This written decision was approved by a vote of the Commission on April 9, 2009.

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

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 24, 2008 by the Planning Board 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 3.401a [3.401 Any development, including the expansion of an existing development, which proposes to create or accommodate: a) ten (10) or more dwelling units].

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, July 4, 2008. The subsequent continued public hearings were scheduled and announced at the end of each hearing and therefore were not re-advertised. The re-opened public hearing on April 9, 2009 was published in the Vineyard Gazette March 27, 2009.

Hearings: The Commission held a series of public hearings on the Application that were conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on July 17, 2008; which was continued to August 7, 2008 which was continued to August 28, 2008; which was continued to September 18, 2008; which was continued to October 16, 2008; which was continued to December 18, 2008; which was continued to January 8, 2009; which was continued to February 5, 2009 for the purpose of receiving written information. The Public Hearing was re-opened on March 5, 2009 for the purpose of receiving more illustrative information regarding the plan. A re-opened public hearing was held on April 9, 2009 and the public hearing was 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 "Site Plan", consisting of one 11" X 17" page of the layout of the proposed project with the building, parking, and planting, dated December, 2008.
- P2 "Proposed Drainage Plan", consisting of one 11" X 17" page of the layout of the proposed project with the building and drainage plan, dated August 25, 2008. Prepared by Schofield, Barbini & Hoehn Inc.; State Road, Vineyard Haven, Mass. Scale 1" = 20'.
- P3 "Dukes County Side Elevation – Option 2", consisting of one 11" X 17" page of front elevation, dated April 8, 2009. Prepared by Terrain Architects; 13 Beach Street Extension, P.O. Box 4512, Vineyard Haven, MA 02568. Scale: 1/8" = 1'-0".

- P4 "Side Elevation (North Side) – Option 2", consisting of one 11" X 17" page of front elevation, dated April 8, 2009. Prepared by Terrain Architects; 13 Beach Street Extension, P.O. Box 4512, Vineyard Haven, MA 02568. Scale: 1/8" = 1'-0".

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Planning Board April 24, 2008.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Date, April 29, 2008; revised May 5, 2008; revised June 4, 2008; revised July 15, 2008; revised August 8, 2008; revised August 28, 2008, revised September 18, 2008; revised October 15, 2008; revised December 1, 2008; revised December 18, 2008; revised January 8, 2009; revised February 5, 2009.
- E3. Photographs of the site, taken on May 5, 2008, August 5, 2008, and January 8, 2009 by MVC staff members, Paul Foley and Mark London.
- E4. Letter from the Applicant with a list of 20 abutters and neighbors that signed a statement saying that they have no opposition to the building he proposes to build
- E5. Letter from Annie Parr
- E6. Letter from Holly Alaimo
- E7. Letter from Chester Bartels
- E8. Letter from Walter Isaacs
- E9. Letter from Walter Isaacs (second letter)
- E10. Letter from Susan and David Wilson
- E11. Letter from Candace Nichols
- E12. Letter from Lucy Abbott
- E13. Minutes of the Commission's Land Use Planning Committee meeting, May 5, 2008.
- E14. Minutes of the Commission's Land Use Planning Committee meeting, March 16, 2009.
- E15. Minutes of the Commission's Public Hearing, November 2, 2009.
- E16. Minutes of the Commission's Continued Public Hearing, July 17, 2008.
- E17. Minutes of the Commission's Continued Public Hearing August 7, 2008.
- E18. Minutes of the Commission's Continued Public Hearing, August 28, 2008.
- E19. Minutes of the Commission's Continued Public Hearing, September 18, 2008.
- E20. Minutes of the Commission's Continued Public Hearing, October 16, 2008.
- E21. Minutes of the Commission's Continued Public Hearing, December 18, 2008.
- E22. Minutes of the Commission's Continued Public Hearing, January 8, 2009.
- E23. Minutes of the Commission's Continued Public Hearing, February 5, 2009.

- E24. Minutes of the Commission's Continued Public Hearing, April 9, 2009.
- E25. Minutes of the Commission Meeting of March 5, 2009– Deliberations and Decision.
- E26. Minutes of the Commission Meeting of April 9, 2009– Deliberations and Decision.
- E27. Minutes of the Commission Meeting of April 9, 2009 – 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 Don Muckerheide.
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Letters from 8 citizens of Martha's Vineyard (listed above).
- Oral testimony from Town Boards or members of Town Boards: David Wilson (Cottage City Historic District); John Bradford (Chairman Oak Bluffs Planning Board); Jim Westervelt (Oak Bluffs Planning Board)
- Oral testimony from Public: Thatcher Ulrick; Patrick Manning (Island Affordable Housing Fund); Matt Cramer; Holly Alaimo; Michael Hunter; Sue Dawson; Jan Meersman; Moira Fitzgerald; Alison Shaw; Mimi Davisson; and Judy Schubert.

3. FINDINGS

3.1 Project Description

- The site is about a quarter-acre (0.27 acre) lot on Dukes County Avenue in the B-1 Business District of Oak Bluffs.
- The proposal was significantly revised during the process from the original proposal.
- The final proposal is to demolish the entire existing structure and build a single new building with twelve (784 sf) two-bedroom units (total of 24 bedrooms max.)
- Several units could become one-bedroom units with an office.
- The existing footprint is 2,916 sf. The proposed footprint would be 4,092 sf (a 29% increase). The total gross square footage would rise from 3,224 sf to 12,276 sf (66' x 62' x 3 stories).
- The stated goal of the project is to provide housing for year-round residents and to initially sell the units for no more than \$350,000 each.
- The bottom four units will be handicap modifiable to accommodate persons with disabilities if needed.

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 is a good location for multi-family dwellings because of its proximity to downtown, access to services, and historic parks. The Commission finds that zoning in the B-1 allows for apartment buildings and for structures of this size. The Commission notes that though the property is zoned for business the proposal is not for commercial uses, and that earlier versions of this proposal were not as large.

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).

This proposed use is likely to be more benign to the environment than the past uses and some of the potential uses. With respect to Wastewater and Groundwater, the Commission finds that the project will be connected to the Oak Bluffs Wastewater facility and that the Applicant will supply a plan to handle stormwater runoff.

With respect to Open Space, Natural Community, and Habitat, the Commission finds that the project is located in a business district that is not habitat. The Commission finds that the Applicant will retain the existing mature trees on the site and add streetscape landscaping. The Commission notes that the intensity of use of the proposal does not allow for much open space.

With respect to Night Lighting and Noise, the Commission finds that the Applicant has made offers to minimize the amount and type of lighting. The Commission notes that other permitted uses could have been noisier and more offensive.

With respect to Energy and Sustainability, the Commission finds that the project will be an energy efficient building and will be designed for the possibility of installing solar collectors.

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 will result in an increase in trips from the current use of the property, but a decrease compared to uses that existed several years ago. The Commission notes that the proposal would also likely have less impact on trip generation compared to what this site could generate with a commercial use.

With respect to Scenic Values, Character, and Identity: The Commission finds that the proposed three-story high, flat-roof building will be significantly larger and more imposing than other buildings in that neighborhood, and that the site use will be significantly higher density. The Commission notes that the proposal incorporates design details found in traditional buildings in other parts of Oak Bluffs, though not in this immediate neighborhood.

With respect to the Impact on Abutters, the Commission finds that the proposed building will be quite visible in the immediate area. The fact that it will present a long and high wall facing the immediate abutter is mitigated by the fact that the abutter is a business use. The Commission notes that, while there were some abutter concerns, many neighbors expressed support for the project.

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

The Commission finds that Applicant has offered to restrict the initial sales price of the units, to limit short-term rentals, to limit the number of rentals per residence to two per year, and to pay the MVC recommended affordable housing mitigation fee. The Commission notes that the project may serve as an experiment in a different way to address the housing needs of the year-round, middle-income community, without subsidies and with limited restrictions. However, the Commission notes that there are no permanently affordable units in the building.

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 Applicant is paying the cost to be tied into the Town's water and sewer services and that all condominium residences will be paying residential property taxes to the Town. The Commission finds that the additional impact on Town services is likely to be limited. The Commission notes that this is not a subsidized project.

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 finds that the project is allowed under zoning.

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 housing, 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 subject to Site Plan Review by the Planning Board of the town of Oak Bluffs.

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

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on April 9, 2009 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 April 9, 2009.

- Voting in favor: Jim Athearn; John Breckenridge; Christina Brown; Peter Cabana; Chris Murphy; Jim Powell; Doug Sederholm; and Linda Sibley.
- Voting against: Andrew Woodruff.

- 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 April 9, 2009 and was approved by vote of the Commission on April 9, 2009.

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. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town 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 and/or Towns attorney's fees and costs incurred in obtaining judicial relief.

1 Housing

- 1.1 As offered by the Applicant, the applicant shall pay the MVC recommended affordable housing mitigation of \$106,060 to the Dukes County Regional Housing Authority, preferably for the Rental Assistance Program.
- 1.2 As offered by the Applicant, the initial sale price shall be no more than \$350,000 for each 2-bedroom unit.
- 1.3 As offered by the Applicant, weekly rental use of the condo units shall be prohibited through a deed restriction within the Master Deed of the Condominium Association
- 1.4 As offered by the Applicant, the Condominium Master Deed shall limit rental periods to a minimum of no less than 30 days per rental.
- 1.5 As offered by the Applicant, the Condominium Master Deed shall limit the number of rentals per residence to two per year.
- 1.6 As offered by the Applicant, the Applicant shall notify the local affordable housing groups when the units are for sale. The property will be marketed as soon as the permits have been secured.
- 1.7 As offered by the Applicant, the advertising and marketing of the housing units for sale shall be in local newspapers for two months before any advertising or marketing off-Island.
- 1.8 As offered by the Applicant, whereas the purpose of this Community Housing Project is to provide housing for Island residents, the Condominium Master Deed shall restrict the use of the short-term rental provision to owner occupants. Should an owner not use the building as their primary residence and rent their unit, said rental shall be limited to year-round use and the tenant shall not be allowed to sublet said unit.
- 1.9 The Condominium Master Deed and other documents relating to the housing offers shall be submitted to and is subject to the approval of LUPC before site work, demolition, and/or construction begins.

2 Wastewater, Groundwater And Stormwater Management

- 2.1 As offered by the Applicant, the project shall be connected to the Town Wastewater System prior to occupation of the units.
- 2.2 As offered by the Applicant, the Applicant shall install a stormwater system to handle a 25-year return storm on site. This plan shall be submitted to the LUPC for review and approval prior to completion of the project.

3 Building Design

- 3.1 As offered by the Applicant, final architectural details shall be submitted for the review and approval of the LUPC before the building is ordered.
- 3.2 The design features and architectural details shall be appropriate for this style of architecture as found on traditional buildings in the Dukes County Avenue neighborhood.
- 3.3 Exterior materials shall be natural white cedar shingles, painted wood siding, or fiber-cement siding, with traditional trim and other detailing.
- 3.4 The height of the top of the mansard roofline shall not exceed 30'-3", and height of the four tower peaks shall not exceed 32'-0".
- 3.5 Before the issuance of the Building Permit, the final architectural plans corresponding to the approved preliminary plans shall be submitted to and are subject to the approval of the Land Use Planning Committee. No building permit shall be issued except for a set of plans bearing the notation of design approval by LUPC, accompanied by a Certificate of Compliance signed by the MVC Executive Director.

4 Landscaping and Lighting

- 4.1 A detailed landscaping and lighting plan shall come back to LUPC for review and approval before a Certificate of Occupancy is issued.
- 4.2 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.
- 4.3 As offered by the Applicant, any security lighting shall be motion sensitive
- 4.4 As offered by the Applicant, all exterior lighting shall be downward shielded to prevent light from escaping the property.
- 4.5 Exterior lighting shall be limited to landscape lighting depicted on the landscape plan extending no more than three (3) feet above the ground, and low-glare wall sconces at each door controlled by motion detectors. All lighting shall be downward shielded to prevent direct light from escaping the property.

5 Parking

- 5.1 As offered by the Applicant, parking shall be limited to the occupants of the building and their guests. Parking spaces shall not be rented out to others.

6 Stormwater

- 6.1 As offered by the Applicant, the Applicant shall install a stormwater system to handle a 25-year return storm on the site. This plan will be submitted to the LUPC for review and approval prior to completion of the project.

7 Energy/Sustainability

7.1 As offered by the Applicant, the roof shall be designed to accommodate water-heating solar collectors.

8 Substantial Alterations

8.1 As offered by the Applicant, should the Applicant, wish to substantially alter the use or appearance of the premises from the proposed uses, he shall first return to the Martha's Vineyard Commission to request approval of said alteration.

6. CONCLUSION

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's 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; 1.3; 1.4; 1.5; 1.8; 1.9; 2.1; 2.2; 3.1; 3.2; 3.3; 3.5; 4.1; 4.3; 4.4; 4.5; and 6.1.

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

for Chris Murphy Vice-Chair
Christina Brown, Chairman

4/17/09
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 17th day of April, 2009, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Chris Murphy, 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.

Jo-Ann Taylor
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: April 17, 2009
Deed - Book 1176, page 434