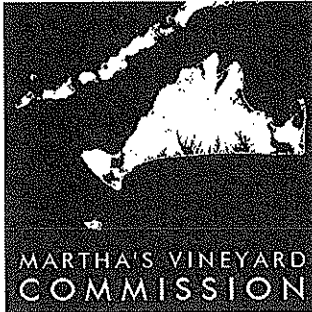




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Decision of the Martha's Vineyard Commission

DRI 616 – AA Island Auto Rental Five Corners

1. SUMMARY

Referring Board: Zoning Board of Appeals, Town of Tisbury, MA

Subject: Development of Regional Impact #616
AA Island Auto Rental Five Corners

Project: Demolition of two residential buildings and construction of a three-story multi-use building.

Owner: Bryan Nelson and Kenneth Bettenhauser

Applicant: Bryan Nelson and Kenneth Bettenhauser

Applicant Address: P.O. Box 1220, Edgartown, MA 02539

Project Location: 6 Water Street, Tisbury Map 7-F-9 (0.11 acres)

Description: To replace a two-story house and outbuilding with a single three-story multi-use structure with a rental car business on the first floor and grounds with two apartments upstairs. The proposed building would contain 1,998 sf of office space and would be built on a concrete slab at grade. The site would be used for parking a maximum of 10 cars on site (2 for residences, remainder for rental business) with a 24 car a day limit.

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 24, 2008.

Written Decision: This written decision was approved by a vote of the Commission on August 14, 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 May 14, 2008 by the Zoning Board of Appeals 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 3.301e. 3.301e is a Concurrence Review. On June 9, 2008 the LUPC voted unanimously to recommend to the full Commission to concur with the town referral due to the area's high traffic congestion and visibility and that a public hearing would allow these matters to be fully explored and include a traffic study. Subsequently the Applicant decided to proceed directly to Public Hearing without waiting for the full Commission to vote on the concurrence review in order to expedite the scheduling of the public hearing.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, June 13, 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 June 26, 2008 and which was continued to July 24, 2008. The Public Hearing was closed on the same night, Post Public Hearing LUPC was waived and the Commission proceeded to Deliberation and Decision on July 24, 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 "Site Plan", consisting of one 11" X 17" page of site layout, existing and proposed building locations, parking spaces, and proposed driveway (Scale 1" = 10') prepared by Schofield, Barbini, & Hoehn, Inc., State Road, Vineyard Haven, Mass. 10454, April 7, 2008 revised July 8, 2008.
- P2 5 page Memo from Bryan Nelson and Ken Bettenhauser (A-A Island Auto Rental) with attachments of alternative building designs. Pages 2, 3, 4, and 5 are sketches of a 3-D model of the building. Page 2 is "Design # 1 5-8-08"; page 3 is "Mr. London's comments on 5-8-08"; Page 4 is "Design #2 based on Mr. London's Feed Back of 5-8-08"; and Page 5 is "Design with Smaller Dormers 7-9-08".
- P3 "DRI 616 – AA Island Auto Rental Five Corners Original Plans" consisting of 5 pages of a perspective sketch, floor plans and foundation plan. No scale. 4/7/08.

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Zoning Board of Appeals May 14, 2008.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, June 26, 2008.
- E3. Review of Atlantic Island Auto Rental Traffic Assessment Report, by Charles C. Crevo, Ph.D., P.E. of C3 Consulting Group for the Martha's Vineyard Commission, June 23, 2008
- E4. Photographs of the site, taken on June 9, 2008 and June 23, 2008 by MVC staff members, Paul Foley and Mark London.
- E5. Letter from Sherm and Suzie Goldstein, dated June 20, 2008.
- E6. Letter from Todd Silva, dated May 19, 2008.
- E7. Letter from Robert S. Douglas, Jr, dated July 10, 2008.
- E8. Letter from Robert Breth, dated June 9, 2008.
- E9. Letter from Dr. David Finkelstein, dated February 26, 2008.
- E10. Letter from Jamie Douglas, dated July 10, 2008.
- E11. Letter from Henry Stephenson and L. Anthony Peak (Tisbury Planning Board Co-Chairmen), dated June 20, 2008.
- E12. Minutes of the Commission's Land Use Planning Committee meeting, June 9, 2008.
- E13. Minutes of the Commission's Public Hearing, June 26, 2008.
- E14. Minutes of the Commission's Continued Public Hearing, July 24, 2008.
- E15. Minutes of the Commission Meeting of July 24, 2008 – Deliberations and Decision.
- E16. Minutes of the Commission Meeting of August 14, 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 Bryan Nelson & Kenneth Bettenhauser
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Letters from 6 citizens of Martha's Vineyard.
- Oral testimony from Town Boards or members of Town Boards: L. Anthony Peak (Tisbury Planning Board Co-Chairmen); and Jeff Kristal (Selectmen).

3. FINDINGS

3.1 Project Description

- The 0.11-acre site is located on Water Street in the B-1 Commercial District of Vineyard Haven (Tisbury).

- There are two existing buildings that will be demolished, a two-story house and an outbuilding used for housing.
- The proposal is to build a single three-story multi-use structure with a rental car business on the first floor and grounds with two apartments upstairs.
- The Applicant has a purchase and sales agreement subject to permitting approvals by July 2008. Their lease where they are currently located is up on December 31, 2008.
- They said they have offered the existing structure to affordable housing groups but there was no interest.
- The proposed building will contain 1,998 sf total floor area, made up of office space (stick built) on the first floor and two 1-bedroom apartments on the second and third floors (modular) for staff housing at no charge to the employee.
- The new building will be built on a concrete slab at grade.
- They have been permitted for a total of 10 cars on site (2 for employee residences) with a 24 car a day limit.

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 the business offers a valuable service to visitors arriving by ferry, is a relocation from next door, and is allowed in the business district. The Commission notes that the Tisbury Planning Board would like to relocate this type of business from the waterfront gateway area, but finds that this is not feasible at this time.

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 Applicant plans to tie into the sewage treatment plant, thereby eliminating an existing septic system and the nitrogen load associated with it.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located on a very small lot in the Business District.

With respect to Night Lighting and Noise, the Commission finds that the lighting is minimal, with lights on the back stairs that will be downward shielded and on motion detectors.

With respect to Energy and Sustainability, the Commission finds that the project will use EnergyStar appliances and should exceed the requirements of the Massachusetts Building Code Energy Section by 20%.

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 notes that the business already exists next door, although the Commission evaluated this as a new use for this property. The Commission notes concerns about congestion at the Five Corners intersection, but finds that this problem should be ameliorated with the prohibition of left-hand turns onto the property.

With respect to Scenic Values, Character, and Identity: The Commission finds that, once the conditioned modifications are made, the proposed building design will be appropriate to this major gateway to the Island, though it is somewhat higher than nearby buildings.

With respect to the Impact on Abutters, the Commission finds that the immediate area is both a commercial hub and a traffic hub. The Commission notes that the car rental business does create noise and activity.

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 mixed-use building will have two apartments that will be used by employees of the business, or if the owner has no employees who need rental housing, will be rented to others provided that there are no short-term rentals.

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).

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 in the Business Zoning District. The Commission notes that the Tisbury Planning Board expressed a desire to relocate this type of business from the waterfront gateway area but finds that there is not a plan in place at this time nor would imposing such restrictions on this Applicant be equitable or feasible at this time.

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 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 July 24, 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 24, 2008.

- Voting in favor: Jim Athearn; John Breckenridge; Christina Brown; Peter Cabana; Chris Murphy; Ned Orleans; Susan Shea; Linda Sibley; Richard Toole; and Andrew Woodruff.
- Voting against:
- Abstentions:

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 24, 2008 and was approved by vote of the Commission on August 14, 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 Affordable Housing

- 1.1 As offered by the Applicant, the two apartments at the premises shall be rented to employees of the owner, or if the owner has no employees who need rental housing, to members of the general public, provided that no rentals may be on a short-term basis.

2 Traffic and Transportation

- 2.1 As offered by the Applicant, the Applicant shall prohibit left turns into the proposed site. The Applicant shall install a "No Left Turn" sign at the appropriate project driveway location or on Water Street at a location visible to drivers heading to the ferry terminal.
- 2.2 As offered by the Applicant, the Applicant shall provide instructions to clients that when returning rental vehicles they must continue on Water Street to the turn-around and return to the proposed site, making a right turn into the property. An alternate return route could be from Main Street via Union Street or Cromwell Lane.

3 Building Design

- 3.1 As offered by the Applicant, the exterior siding materials shall be cedar shakes and with white trim.

- 3.2 The building design shall be similar to design option 2 (attached). However, a revised design with the bulk of the shed dormer reduced – especially by setting it further back from the front façade and by lowering the height – shall be submitted to and is subject to the approval of the MVC Land Use and Planning Committee (LUPC).

4 Landscaping

- 4.1 A final landscaping plan shall be submitted to and is subject to the approval of the LUPC. It shall include a clear indication of the driving areas, curbing, surface materials, at least one and preferably two large street trees (one on an island separating the incoming and outgoing traffic, if possible), and other vegetation. The width of the curb cut and front driveway shall be minimized consistent with safety, with input from MVC Traffic Engineer.
- 4.2 The applicant shall cooperate with the Town to make the sidewalk as well delineated as possible, preferably by continuing the sidewalk material across the curb cut.

5 Stormwater

- 5.1 A stormwater design maximizing the retention of runoff from roof, parking, and travel surfaces shall be submitted to and is subject to the approval of the LUPC.

6 Lighting

- 6.1 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.
- 6.2 As offered by the Applicant, all exterior lighting will be downward shielded to prevent direct light from escaping the property.

7 Dormant Easement

- 7.1 There shall be a 10'-wide dormant easement along the east edge of the property allowing for the possible future relocation of the curb cut and driveway along the property line to be shared, should the Town of Tisbury determine that this is desirable and feasible.

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'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 condition in this Decision has been satisfied: 2.1; 3.1; 3.2; 4.1; 4.2; 5.1; 6.1; and 6.2.

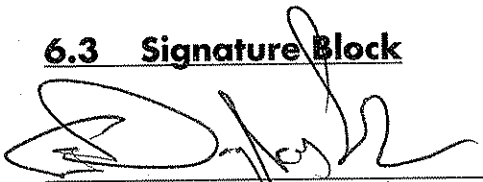
6.2 Notice of Appellate Rights

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

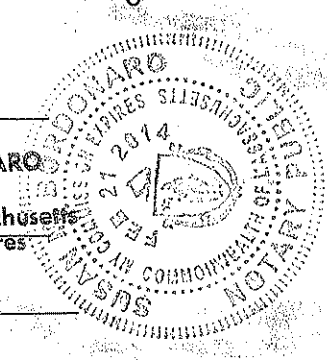
8-22-08
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 22nd day of August, 2008, before me,
Susan M. Bordonaro, the undersigned Notary Public, personally
appeared E. Douglas Sederholm, proved to me through satisfactory evidence of identity,
which was/were 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.


Signature of Notary Public


SUSAN M. BORDONARO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 21, 2014
Printed Name of Notary
My Commission Expires

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, attest: 8/26/08
Deed - Book 1158, page 791
Deanne E. Powers Register