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Decision of the Martha's Vineyard Commission DRI 617 – Fortune World

1. SUMMARY

- Referring Board: Zoning Board of Appeals, Town of Oak Bluffs, MA
- Subject: Development of Regional Impact #617
Fortune World
- Project: Demolition of existing fire-damaged building and replacement with 2-story multi-use building.
- Owner: Fortune World LLC, Danny Chan (Owner)
- Applicant: Fortune World LLC, Danny Chan (Owner), Peter Breese & Jessica Cook (Architects)
- Applicant Address: Danny Chan, PO Box 4635, Oak Bluffs, MA 02575
- Project Location: 6 Sea View Avenue Extension, Oak Bluffs, Map 9 Lot 41.1 (4,985 sf, 0.11 acres)
- Description: To demolish an existing, vacant, fire-damaged, 1-story 2-bedroom multi-use building. To erect a 2-story multi-use building including retail on the ground floor and two 1-bedroom housing units on the second floor.
- 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 September 11, 2008.
- Written Decision: This written decision was approved by a vote of the Commission on October 16, 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

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 July 7, 2008 by the Zoning Board of Appeals 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 3.301a and 3.301e. A referral under section 3.301a requires a mandatory review as a DRI.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, August 1, 2008.

Hearings: On August 14, 2008 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. The written record was left open until August 28, 2008 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 "Schematic Site Plan: Fortune World LLC", consisting of one 18" X 24" sheet of colored site plan, Scale: 1" = 10', prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P2 "Schematic Elevations: North and West: Fortune World LLC", consisting of one 8.5" X 11" sheet of elevations, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P3 "Schematic Elevations: South and East: Fortune World LLC", consisting of one 8.5" X 11" sheet of elevations, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P4 "Schematic Plan: First Floor Plan: Fortune World LLC", consisting of one 8.5" X 11" sheet of floor plans, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P5 "Schematic Plan: Second Floor Plan: Fortune World LLC", consisting of one 8.5" X 11" sheet of floor plans, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.

- P6 "Existing Floor Plan: Fortune World LLC", consisting of one 8.5" X 11" sheet of floor plans, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P7 "Existing Elevations: Fortune World LLC", consisting of one 8.5" X 11" sheet of elevations, Scale: 1/8" = 1'-0", prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P8 "Perspective Looking East: Fortune World LLC", consisting of one 8.5" X 11" sheet of perspective sketch, prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P9 "Perspective From Northwest: Fortune World LLC", consisting of one 8.5" X 11" sheet of perspective sketch, prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P10 "Perspective from Steamship Authority Dock: Fortune World LLC", consisting of one 8.5" X 11" sheet of perspective sketch, prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P11 "Streetscape Elevations from Seaview Ave: Fortune World LLC", consisting of one 8.5" X 11" sheet of elevations, prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.
- P12 "DRI # 617 - Fortune World- Offers 09-11-08", consisting of two 8.5" X 11" sheets of written offers, prepared by Breese Architects, 11 Beach Street, Vineyard Haven, MA 02568, 09-11-08.

2.4 Other Exhibits

- E1. Referral to the MVC from the Oak Bluffs Zoning Board of Appeals July 7, 2008
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, July 21, 2008, and revised August 14, 2008.
- E3. Photographs of the site, taken on August 14, 2008 by MVC staff members.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, July 21, 2008.
- E5. Minutes of the Commission's Public Hearing, August 14, 2008.
- E6. Minutes of the Commission Meeting of September 11, 2008 – Deliberations and Decision.
- E7. Minutes of the Commission Meeting of October 16, 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 Danny Chan; Peter Breese; and Jessica Cook.
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Written and oral testimony from Public: Michael Santoro.

3. FINDINGS

3.1 Project Description

- The site is small lot (0.11 acre) in the B-2 Business District of Oak Bluffs on Sea View Avenue Extension looking out at the Vineyard Sound next door to the Lookout Tavern.
- The existing 1-story 2-bedroom multi-use building was built in 1940. It has been vacant since a fire several years ago.
- The proposal is to demolish the existing building and replace it with a new 2-story 2-bedroom multi-use building.
- The existing building has a footprint and floor area of 1,300 sf; the new building would have a 1,400 sf footprint and 2,800 sf of total floor space.

3.3 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies."

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the proposal is an appropriate use and building design in this prominent location.

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 project will connect the property to the wastewater treatment facility. The Commission notes that the project is designed to keep storm water runoff on the property.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located in the middle of town on a very small lot in a business district.

With respect to Night Lighting and Noise, the Commission finds that the project has dealt with lighting issues with their offers.

With respect to Energy and Sustainability, the Commission finds that the project will exceed the Massachusetts Building Code requirements for energy by at least 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 finds that the Applicant has offered to not locate a business that is on the MVC List of High-Traffic Generating Businesses, and is providing vehicular access via an existing easement at the rear.

With respect to Scenic Values, Character, and Identity, the Commission finds that the proposed building is well designed and fits in with the character and architecture of the neighborhood.

With respect to the Impact on Abutters, the Commission finds that the project is an improvement to the neighborhood.

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 Applicant has offered to ensure that both residential units will be rented out on a year-round basis which will help address the housing needs of the year-round community.

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 this project should increase the tax base slightly.

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 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 Special Permit review by the Zoning Board of Appeals of the town of Oak Bluffs for pre-existing non-conforming setbacks.

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 located within the Copeland 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 September 11, 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 September 11, 2008.

- Voting in favor: James Athearn; John Breckenridge; Christina Brown; Peter Cabana; Mimi Davisson; Chris Murphy; Katherine Newman; Doug Sederholm; and Andrew Woodruff.
- 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 September 11, 2008 and was approved by vote of the Commission on October 16, 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. 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) Landscaping

- a) As offered by the Applicant, a final landscaping plan including an implementation timetable showing plant species and locations shall be submitted for the review and approval of LUPC before construction begins.
- b) 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.
- c) As offered by the Applicant, storm water run-off shall be controlled thru permeable driving surfaces, gutters and downspouts that tie into a dry well on the property as shown on the revised Site Plan, and will be annotated on the construction documents.
- d) As offered by the Applicant, the existing Willow tree to the north of the property shall be protected during construction.

2) Exterior Lighting

- a) As offered by the Applicant, a final lighting plan shall be submitted to and is subject to the approval of LUPC before construction begins. It shall be based on the following principles:
 - i) All exterior lighting shall be downward shielded to prevent direct light from escaping the property.
 - ii) Exterior lighting on buildings shall be limited to that required by code and shall be on timers to ensure that they are turned off during the day as well as turned off during the night when the store is closed.
 - iii) For landscaping, bollard lights shall be no more than 3 feet tall, if needed for pedestrian and vehicular safety.

- iv) Lighting on signs shall be shielded to prevent glare for drivers. Signs on building shall be downward shielded to prevent direct light from escaping the property.
- v) Security lighting, if any, shall be on motion detectors.

3) Affordable Housing

- a) As offered by the Applicant, both residential rental units shall be occupied on a year-round basis.

4) Vehicular Access

- a) As offered by the Applicant, vehicular access to the property shall only be accessed from the rear easement. If the owner cannot secure the revised legal easement the owner will re-apply to the MVC.

5) Use

- a) As offered by the Applicant, Fortune World, LLC shall not rent or sell the ground floor business space to any of the following types of businesses (the MVC High Traffic Generating List): 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. Nor other businesses that generate 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.
- b) As offered by the Applicant, and as prohibited in the deed, the property shall not house a restaurant or liquor establishment.

6) Wastewater

- a) As offered by the Applicant, the project shall be tied into the town waste water system and existing septic system will be removed which has been approved by the Town of Oak Bluffs Wastewater Commission.

7) Energy/Sustainability

- a) As offered by the Applicant, the building shall exceed the Massachusetts Building Code energy requirements by 20%.

8) Noise

- a) As offered by the Applicant, all mechanicals shall be located in the basement or insulated attic space aside from the air conditioning condensers.

9) Architectural Detailing

- a) As offered by the Applicant, the exterior building materials shall be cedar shingle siding with white trim.

10) Duration of Exterior Construction

- a) As offered by the Applicant, all substantial construction to the exterior of the building shall take place between Columbus Day and Memorial Day.

11) Substantial Alterations

- a) As offered by the Applicant, should Fortune World, LLC substantially alter the use of the premises from the proposed uses it shall 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' 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: 1a; 1c; 1d; 4a; 6a; 8a; 9a; and 10a.

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.

6.4 Signature Block

E. Douglas Sederholm, Chairman

Date

6.5 Notarization of Decision

Commonwealth of Massachusetts

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6.4 Signature Block


E. Douglas Sedholm, Chairman

10-24-08
Date

6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 24th day of October, 2008, before me, Susan M. Bordonaro, the undersigned Notary Public, personally appeared E. Douglas Sedorin, 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.

Susan M. Bordonaro
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

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: October 24, 2008

Deed - Book , page
Number 00069050
Cert # 11078