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Decision of the Martha's Vineyard Commission DRI 623 – Wavelengths Buildings



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1. SUMMARY

- Referring Board: Edgartown Planning Board, Town of Edgartown, MA
- Subject: Development of Regional Impact #623
- Project: To remove an existing one-story building on Upper Main Street and replace it with a three-story mixed-use building and build a new three-story building with three 2-bedroom residential units in the back of the property.
- Owner: Jayne Steide and Melissa Montession
- Applicant: Jayne Steide and Melissa Montession
- Applicant Address: P.O. Box 1870, Edgartown, MA
- Project Location: 223 Upper Main Street, Edgartown Map 20-A Lot 95 (0.29 acres)
- Description: To remove an existing one-story building in the Edgartown B-II Upper Main Street District and replace it with a three-story 4,198 sf mixed-use building and build a new three-story 5,381 sf building with three 2-bedroom residential units in the back of the property. The front replacement building would have three offices/shops, two on the ground floor and one on the second, and one 2-bedroom apartment. All units will be sold as condominium units.
- 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 November 18, 2010.
- Written Decision: This written decision was approved by a vote of the Commission on December 2, 2010.

The permit-granting authorities of the Town of Edgartown 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 January 13, 2010 by the Planning Board of the Town of Edgartown, 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 3.301b (addition of 1,000 sf to a commercial building resulting in more than 2,000 sf.) and 3.401d (four or more units which mix residential and commercial). Both are mandatory referrals requiring review as a Development of Regional Impact and the project was reviewed as such 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, March 19, 2010; and September 10, 2010.

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 1, 2010; which was continued to May 6, 2010 then continued indefinitely and then rescheduled for September 23, 2010 and then continued without hearing testimony to October 21, 2010, and continued to November 4, 2010 and closed on that date.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- P1 "Wavelengths Site Plan" consisting of one 24" by 36" sheet showing the proposed building, landscaping, and parking locations. Prepared for Jayne M. Steide & Melissa R. Montession by Schofield, Barbini & Hoehn Inc. 12 Surveyor's Lane, P.O. Box 339, Vineyard Haven, MA. Drawn November 18, 2010. Scale: 1" = 20'.
- P2 "223 Upper Main Street: Residences Exterior Elevations", drawing A-03, consisting of one 24" by 36" sheet showing the proposed east, west, north, and south elevations of the residential building in the rear. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn November 4, 2010. Scale: 1/4" = 1'-0".
- P3 "223 Upper Main Street: Residences Garage Floor Plans", drawing A-01, consisting of one 24" by 36" sheet showing the proposed garage floor plan and perspective sketch of the residential building in the rear. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn November 4, 2010. Scale: 1/4" = 1'-0".

- P4 "223 Upper Main Street: Residences Living/Floor Plans", drawing A-02, consisting of one 24" by 36" sheet showing the proposed first and second floor plans of the residential building in the rear. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn November 4, 2010. Scale: 1/4" = 1'-0".
- P5 "223 Upper Main Street: Offices Exterior Elevations", drawing A-03, consisting of one 24" by 36" sheet showing the proposed east, west, north, and south elevations of the mixed use building in the front. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn October 19, 2010. Scale: 1/4" = 1'-0".
- P1 "223 Upper Main Street: Offices First and Second Floor Plans", drawing A-01, consisting of one 24" by 36" sheet showing the proposed first and second floor plans and two perspective sketches of the mixed use building in the front. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn October 19, 2010. Scale: 1/4" = 1'-0".
- P1 "223 Upper Main Street: Offices Third Floor and Foundation Plan", drawing A-02, consisting of one 24" by 36" sheet showing the proposed third floor and foundation plan and two perspective sketches of the mixed use building in the front. Prepared by Sullivan O'Connor Architects; P.O. Box 989, Oak Bluffs, MA. Drawn October 19, 2010. Scale: 1/4" = 1'-0".
- P2 "Offers" consisting of one 8.5" by 11" sheet listing specific aspects of the plan that will be carried out in order to improve the project and mitigate any negative impacts signed by Jayne M. Steide on October 19, 2010.

2.4 Other Exhibits

- E1. Referral to the MVC from the Edgartown Planning Board; January 13, 2010.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, February 5, 2010; revised March 25, 2010; revised April 6, 2010; revised September 13, 2010; revised October 20, 2010; revised November 4, 2010.
- E3. Photographs of the site, taken on April 1, 2010, May 6, 2010, and September 21, 2010 by MVC staff member Paul Foley.
- E4. Letters from the Edgartown Planning Board (EPB) which held a continued hearing to review the revised plans on September 21, 2010 and gave the MVC feedback for the continued MVC Public Hearing on September 23, 2010.
- E5. Letter from James Carter, owner of the Clarion, who wrote to say he has no interest in signing an easement for a right of way at this time.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, February 8, 2010.
- E7. Minutes of the Commission's Land Use Planning Committee meeting, September 13, 2010.
- E8. Minutes of the Commission's Land Use Planning Committee meeting, November 15, 2010.
- E9. Minutes of the Commission's Public Hearing, April 1, 2010.
- E10. Minutes of the Commission's Continued Public Hearing, May 6, 2010.
- E11. Minutes of the Commission's Continued Public Hearing October 21, 2010. Hearing Continued without testimony.

- E12. Minutes of the Commission's Continued Public Hearing November 4, 2010.
- E13. Minutes of the Commission Meeting of November 18, 2010 – Deliberations and Decision.
- E14. Minutes of the Commission Meeting of December 2, 2010 – 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 Chuck Sullivan (Architect) and Doug Hoehn (Engineer).
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Mark London, Executive Director.
- Traffic Study presentation by Charles Crevo of C3 Consulting.
- Letter from Eck Wolff of Edgartown, MVC stamped July 7, 2010.
- Letters from James Carter of Edgartown, MVC stamped October 21, 2010.
- Letter from Edgartown Fire Chief, Peter Shemeth, dated November 2, 2010.
- Oral testimony from Public on April 1, 2010: Mike McCourt and Bob Sparks of the Edgartown Planning Board.
- Oral testimony from Public on May 6, 2010: Mike McCourt and Bob Sparks of the Edgartown Planning Board.
- Oral testimony from Public on November 4, 2010: Mike McCourt and Bob Sparks of the Edgartown Planning Board.

3. FINDINGS

3.1 Project Description

- The proposal is to remove an existing one-story building on Upper Main Street and replace it with a three-story 4,198 sf mixed-use building and build a new three-story 5,381 sf building with three 2-bedroom residential units in the back of the property.
- The buildings were scaled down during the MVC DRI process. The three story 4,198 sf bldg had originally been proposed as a 4,475 sf (1,703 sf footprint) mixed-use building. The proposed 5,381 sf three-unit residential building in back was originally proposed at 6,137 sf (2,112 sf footprint) building with four 2-bedroom residential units in the back of the property.
- The final Site Plan (November 19, 2010) shows that both buildings have been reduced in size, a vehicular turn-around has been added at the rear of the property, and the rear building has been moved forward to allow a dormant easement for a possible service road.
- The replacement building will have three offices and one 2-bedroom apartment. There will be two offices on the ground floor and one on the second.
- The new residential building will have 3 two-car garages on the ground floor.
- All commercial and residential units will be sold as condominium units.

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.

3.4 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 proposed development will be a mixed-use, infill project located in the developed business district of the town that will serve the needs of the community and is located near to services. The Commission notes that the property offers limited amenities for residents.

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 be connected to the town sewer and the stormwater runoff will be collected on site.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal is infill development located in a dense neighborhood. The Commission notes that the small amount of green space left on the property is not particularly useable for recreation.

With respect to Night Lighting and Noise, the Commission finds that the applicants have offered to keep exterior lighting to a minimum.

With respect to Energy and Sustainability, the Commission finds that the project will consist of two energy efficient buildings that will exceed the Mass Energy requirements 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 notes that the site is on a bus route and employees can park at the park and ride. The number of parking spaces is limited and the parking layout is tight, but prospective buyers would be aware of the parking limitations when they purchase a unit.

With respect to Scenic Values, Character, and Identity, the Commission finds that the architecture is compatible with the surrounding buildings.

With respect to the Impact on Abutters, the Commission finds that there would be a limited impact on the view of abutters.

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

The Commission finds that the project would create new moderately sized residential units downtown and that one of the units has been reserved for an onsite manager.

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 consistent with the Edgartown B-2 Upper Main Street Master Plan.

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).

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.

The Commission finds that the project is subject to Special Permit review by the Planning Board.

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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on November 4, 2010 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 November 4, 2010.

- Voting in favor: John Breckenridge; Christina Brown; Peter Cabana; Lenny Jason; Chris Murphy; Katherine Newman; Ned Orleans; Doug Sederholm; and Linda Sibley.
- Voting against: James Joyce and Holly Stephenson.
- 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 November 18, 2010 and was approved by vote of the Commission on December 2, 2010.

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 Town's attorney's fees and costs incurred in obtaining judicial relief.

1 Landscaping

- 1.1 As offered by the Applicant, the three street trees in front on Upper Main Street will remain.
- 1.2 As offered by the Applicant, the eight mature trees along the southern border with the Melone property (Map 20-A Lot 97.2) will remain. If any of them do not survive the development they will be replaced. One may be moved to another location on the property.
- 1.3 As offered by the Applicant, an Elm tree will be planted in the island buffer in front of the parallel parking spaces.
- 1.4 As offered by the Applicant, the final formal landscaping plan will come back for the review and approval of the LUPC.
- 1.5 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.

2 Exterior Lighting

- 2.1 As offered by the Applicant, exterior lighting on buildings shall be limited to that required by code, shall be downward shielded to prevent light spilling off the property and shall be either motion sensitive or on timers to ensure that they are turned off when not needed.

3 Affordable Housing

- 3.1 As offered by the Applicant, the applicant will make a \$10,158 donation to an Island affordable housing organization. This donation will be made prior to the issuing of the Certificate of Occupancy by the Town.

4 Wastewater

- 4.1 As offered by the Applicant, the project will be connected to the Edgartown Wastewater Treatment Facility.
- 4.2 As offered by the Applicant, the final storm water plan with details of design and sizing will return to the LUPC for review and approval.

5 Energy

- 5.1 As offered by the Applicant, the buildings will be built with high density foam insulation and exceed the Massachusetts Building Code by 20%.

6 Dormant Easement

- 6.1 As offered by the Applicant, the Applicants will grant a dormant easement to abutting properties if the Town of Edgartown or Martha's Vineyard Commission requests access to or through this property.
- 6.2 The dormant easement going to the Town of Edgartown shall be 14-foot wide running near the back of the property between Map 20-A Lot 93 and Map 20-A Lot 97.2 and shall be recorded in the Registry of Deeds. This easement may be exercised by the Town, in conjunction with similar easements on abutting properties, to provide a back service road running along the rear of the

commercial district. The easement shall be recorded before issuance of the Certificate of Occupancy by the Town .

7 Substantial Alterations

- 7.1 As offered by the Applicant, should they ever 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 Edgartown Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Edgartown 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: 1.1; 1.2; 1.3; 1.4; 2.1; 3.1; and 4.2.

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 Edgartown 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

Christina Brown
Christina Brown, Chairman

12/13/10
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 13th day of December, 2010, before me,
Susan M. Bordonaro, the undersigned Notary Public, personally
appeared Christina Brown, 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
Printed Name of Notary
My Commission Expires
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 21, 2014



6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____
Deed – Book _____, page _____

Attest:
Dianne C. Powers Register