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Decision of the Martha's Vineyard Commission

DRI 622 – Grillo/10 State Rd New Building

1. SUMMARY

- Referring Board: Building Inspector, Town of Tisbury, MA
- Subject: Development of Regional Impact #622
Grillo / 10 State Road New Building
- Project: To construct a new three-story 5,655 gsf mixed use building on a property in the B-1 District behind an existing 1,920 sf building on the same property.
- Owner: Delano Realty Trust; Joe Grillo
- Applicant: Delano Realty Trust; Joe Grillo
- Applicant Address: 40 William Norton Road, Vineyard Haven, MA 02568
- Project Location: 10 State Road, Tisbury, Map 9-A Lot 5 (0.35 acre)
- Description: To construct a new three-story 5,655 gsf mixed use building on a property in the B-1 District behind an existing 1,920 sf building on the same property. The new mixed-use building would have 1-3 units for office/retail on the main level and would have two 2-bedroom apartments on the second floor and 2 large storage areas in the basement for tenants
- 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 December 13, 2012.
- Written Decision: This written decision was approved by a vote of the Commission on January 10, 2013.

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 January 26, 2010 by the Building Inspector of the Town of Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Sections 3.301a (new commercial construction totaling 2,000 square feet or more) and 3.301b (new construction of addition(s) or auxiliary building(s) totaling 1,000 square feet or more of floor area, such square footage resulting in a total square footage of 2,000 feet or more), both mandatory DRI review referrals and 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, November 2, 2012.

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 December 13, 2012.

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 "Plan of Land in Tisbury, Mass. Prepared for Joseph Grillo", consisting of one 11" X 17" page of site plan, prepared by Schofield, Barbini & Hoehn, Inc., 12 Surveyor's Lane, Vineyard Haven, MA 02568, October 23, 2012. Revised and received at MVC December 10, 2012.
- P2 "Foundation Plan", Prepared for Joseph Grillo, 10 State Road, Vineyard Haven, MA. Consisting of one 11" X 17" page with three cross-sections detailing the foundation plan to avoid archeological artifacts, prepared by Crawford Design Associates, Inc., 110 State Road, Vineyard Haven, MA 02568, P.O.B. 2153. Dated January 21, 2013
- P3 "Basement Plan – Storage: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the basement floor plan, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated December 10, 2009; revised January 6, 2010. Scale 1/8" = 1'-0".
- P4 "First Floor Plan – Retail/Commercial: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the first floor plan, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated January 6, 2010. Scale 1/8" = 1'-0".

- P5 "Second Floor Plan – Residential: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the second floor plan, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated January 5, 2010. Scale 1/8" = 1'-0".
- P6 "North Elevation: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the front elevation, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated December 24, 2009. Scale 1/8" = 1'-0".
- P7 "East Elevation: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the side elevation, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated December 24, 2009. Scale 1/8" = 1'-0".
- P8 "South Elevation: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the rear elevation, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated December 24, 2009. Scale 1/8" = 1'-0".
- P9 "West Elevation: Star House", Prepared for Joseph Grillo, consisting of one 11" X 17" page with the side elevation, prepared by P. MacLean Design, Vineyard Haven, MA 02568, Dated December 24, 2009. Scale 1/8" = 1'-0".

2.4 Other Exhibits

- E1. Referral to the MVC from the Tisbury Building Inspector January 28, 2010
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, February 1, 2010; revised October 19, 2012; revised November 15, 2012.
- E3. Traffic Impact and Access Study, by Charles C. Crevo, Ph.D., P.E. of C3 Consulting Group for the Martha's Vineyard Commission, October 2010
- E4. Photographs of the site, taken on August 30, 2005 and November 1, 2012 by MVC staff member Paul Foley.
- E5. Minutes of the Commission's Land Use Planning Committee meeting, February 1, 2010.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, October 22, 2012.
- E7. Minutes of the Commission's Public Hearing, November 15, 2012.
- E8. Minutes of the Commission Meeting of December 13, 2012 – Deliberations and Decision.
- E9. Minutes of the Commission Meeting of January 10, 2013 – 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 Joe Grillo
- Staff reports by Paul Foley, MVC DRI coordinator.
- Oral testimony from Town Boards or members of Town Boards: None
- Oral testimony from Public: Tim Dobel.

3. FINDINGS

3.1 Project Description

- The site is about a third of an acre (0.35 acre) lot in the B-1 Business District of Tisbury.
- The proposal is to build a new three-story 5,655 gross square foot mixed use building on a property in the B-1 District behind an existing 1,920 sf building on the same property.
- The new mixed-use building would have a footprint of 1,885 square feet.
- The new mixed-use building would have 1-3 units for office/retail on the main level and two 2-bedroom apartments on the second floor. One residential unit would be 860 sf and the other would be 820 sf. All five spaces will be sold as condominium units or rented.
- The new mixed-use building would have 2 large storage areas in the basement for tenants
- The proposal shows 17 parking spaces including 2 handicapped. Access to the 10 parking spaces behind the building relies on an easement through the Educomp (4 State Road) lot.

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 this is an infill project and notes that there have not been any comments from the abutters that the project will have a negative impact.

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 that storm water will be retained on the property.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is located in the B-1 Commercial District.

With respect to Night Lighting and Noise, the Commission finds that the Applicant has offered the standard Commission requirements on minimizing light.

With respect to Energy and Sustainability, the Commission finds that the building will be new construction built to the more strict modern energy standards.

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 be sharing the exit and the entrance with the abutters which will reduce some of the traffic impact on State Road. The Commission notes that there will be a small increase in traffic onto State Road at a compromised spot and that the project as proposed requires an easement with the abutters.

With respect to Scenic Values, Character, and Identity: The Commission finds that the project will only be visible from the Veteran's Memorial Park and there is an agreement to do landscaping to minimize the impact on scenic values.

With respect to the Impact on Abutters, the Commission finds that there have not been any written comments or oral testimony from the abutters that the project will have a negative impact.

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 year round apartments and that the Applicant has offered to make the recommended monetary mitigation donation to an island affordable housing organization.

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 notes that the project is in the B-1 Business District which allows a mix of business and residential.

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 and the Island Plan adopted by a vote of the Martha's Vineyard Commission in December 2010.

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 Island Plan adopted by the Commission in December 2010, 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 ZBA of Tisbury.

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 December 13, 2012 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 December 13, 2012.

- Voting in favor: John Breckenridge; Christina Brown; Fred Hancock; Lenny Jason; Jim Joyce; Chris Murphy; Kathy Newman; Doug Sederholm; Linda Sibley; and Brian Smith.
- 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 December 13, 2012 and was approved by vote of the Commission on January 10, 2013.

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. Exterior Lighting

- 1.1. As offered by the Applicant, exterior lighting on buildings shall be limited to that required by code.
- 1.2. As offered by the Applicant, landscape lighting shall be installed as depicted on the landscape plan and shall extend no more than three (3) feet above the ground.
- 1.3. As offered by the Applicant, any security lighting shall be motion sensitive.
- 1.4. As offered by the Applicant, all exterior lighting shall be downward shielded to prevent direct light from escaping the property.

2. Affordable Housing

- 2.1. As offered by the Applicant, the Applicant shall make the recommended affordable housing monetary mitigation for a proposal of 5,655 sf of \$3,650 to an island affordable housing organization. This donation will be made prior to the issuing of the Certificate of Occupancy by the Town.

3. Landscaping

- 3.1. Fertilizers and Pesticides: 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.
- 3.2. Landscaping Plan: As offered by the Applicant, a final landscaping plan, including an implementation timetable, showing plant species and locations is to be submitted for the approval of LUPC before construction begins. All landscaping plans shall use best management practices.
- 3.3. Storm Water Plan: As offered by the Applicant, a final storm water retention plan, designed to handle the 25-year storm shall be submitted for the review and approval of LUPC before construction begins.
- 3.4. As offered by the Applicant, the proposed landscape plan shall be maintained in perpetuity and will be provided to the LUPC prior to issuance of a Certificate of Occupancy.

4. High Traffic Generating Uses

- 4.1. As offered by the Applicant, the Applicant 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.

5. Archaeological Oversight

- 5.1. As offered by the Applicant, the Applicant shall ensure that a professional archeologist from the Public Archeological Laboratory (PAL – Conductors of the Archeological Study for the property) is on site to review the excavation of the footings and foundation.
- 5.2. As offered by the Applicant, the Applicant shall allow Wampanoag tribal oversight of any excavation on the site and will notify them one week before any excavation.
- 5.3. As offered by the Applicant, the Applicant shall notify the MVC DRI Coordinator one week before any excavation.

6. Condominium Documents

- 6.1. As offered by the Applicant, Condominium Association documents shall be provided to the MVC prior to the issuance of an Occupancy Permit.
- 6.2. As offered by the Applicant, units are to be deeded as separate condominium units allowing maintenance to be shared on a per unit basis.

7. Access

- 7.1. As offered by the Applicant, access to and from the property will be shared as shown in documents with 41 Main Street. The easement will be recorded prior to the issuance of the Occupancy Permit.

8. Building Specifications

- 8.1. As offered by the Applicant, exterior siding shall be white cedar shingles.
- 8.2. As offered by the Applicant, exterior trim shall be painted white or exposed Azek or the like.
- 8.3. As offered by the Applicant, roof shingles will be composite architectural grade to match the front house.
- 8.4. As offered by the Applicant, deck shall be mahogany with the rails to match.
- 8.5. As offered by the Applicant, stairs shall be a combination of pressure treated stringers and mahogany treads.
- 8.6. As offered by the Applicant, construction shall follow new energy efficient guidelines (as per the Green Communities Act of 2008) adopted by the Town of Tisbury.
- 8.7. As offered by the Applicant, the parking area shall be covered in crushed pea stone.
- 8.8. As offered by the Applicant, the landscape plan shall be provided for the review and approval of the LUPC prior to the issuance of an Occupancy Permit.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Tisbury Officers and Boards for any local development permits which may be required by law.

The permit-granting authorities of the Town of Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

The Town building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following condition in this Decision has been satisfied: 2.1; 6.1; and 7.1.

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 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

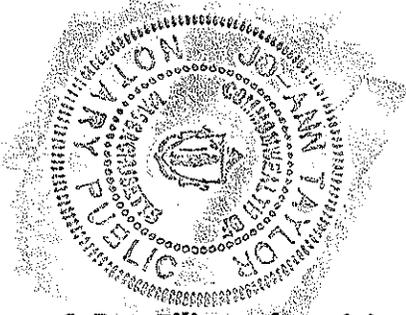
[Signature]
Fred Hancock, Chairman

1/29/13
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 29th day of January, 2013, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Fred Hancock, 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.



[Signature]
Signature of Notary Public

Jo-Ann Taylor
Printed Name of Notary

My Commission Expires February 9, 2018

6.5 Filing of Decision

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

Attest:
[Signature] Register