



OAK BLUFFS PLANNING BOARD

Meeting Minutes

FRIDAY, MAY 15, 2020

10:00 a.m. | Virtual Zoom Meeting

Members in Attendance: Ewell Hopkins, Erik Albert, Bill Cleary, Mark Crossland, JoJo Lambert

Members Absent:

Staff in Attendance: Kim Leaird (*Administrator*)

Attendees: Brian Packish, Gary Johnson, Joe Sullivan, Perry Patterson, Adam Turner, Liz Volchok, Mark Leonard, Sarah Omer, Tom Morrissey, Chuck Sullivan, Bo Fehl

Chairperson Hopkins opened the meeting at 10:02 a.m.

Public Hearing: Menotomy Building

*In accordance with the provisions of M.G.L Chapter 41, Section 81-T and 81-U; Chapter 40A, Section 11 M.G.L., and Oak Bluffs Zoning Bylaws 7.2.6 (Mixed Use) and 5.1.5 (Parking in the B1 District), the Planning Board will hold a public hearing on **Friday, May 15, 2020 at 10am** on the following application:*

Owner: **GJ & BP Holdings, LLC**, P.O. Box 1933, Vineyard Haven, MA 02568

Applicant: **Brian Packish**

Project Location: **14 Kennebec Avenue, Oak Bluffs**; Map 9, Lot 29

Project Description: **Menotomy Building.** Applicant seeks approval to demolish the existing 2,298 square foot historic (built circa 1850) mixed-use building that currently houses the 55-seat Red Cat restaurant and a three-bedroom dwelling above, and replace it with a 5,621 sq. ft. mixed-use building with a 52-seat restaurant and four one-bedroom apartments above.

Plan and Public Inspection: Application, plans, and relevant documents are available online at: <https://www.oakbluffsma.gov/417/Menotomy-Building>

This will be a **virtual meeting**, in accordance with orders issued by the Governor during the current state of emergency. There will be no in-person attendance by the public.

Ewell Hopkins: This is the meeting of the Oak Bluffs Planning Board on Friday, May 15 at 10 o'clock. On the agenda is the public hearing for 14 Kennebec Ave.

Chairperson Hopkins walked through the order of the hearing process.

1. Read the hearing notice,
2. Applicant presentation, uninterrupted.
3. Public comment, letters from other boards and abutters. Those in favor and any comments in opposition.
4. Close public hearing portion.
5. Board will deliberate and walk through the criteria of the bylaws in question (7.2 and 5.1.5).

6. Adam Turner from the Commission will present the MVC decision 695 and the conditions that have been established by the Commission.
7. Discussion of the benefits, detriments and neutral thoughts on the project
8. Board will vote: two motions needed for each of the two special permits sought.

Chairperson Hopkins read the notice into the record (*see above*), and then turned the floor over to the applicant, Brian Packish.

• Applicant Presentation (Brian Packish)

Brian Packish: Thank you. We have an application in front of the Planning Board for the Menotomy project, GJ and BP Holdings LLC, submitted under Section 5.1.5 and 7.2.6. [The building] is currently a 55-seat restaurant and has three individual bedrooms which historically has been used as units over time, meaning they have had locks on the doors, individuals have rented and occupied those rooms with a shared common space of a kitchen, etc.

You have a letter on file documenting that from the tenant of the last nine years in the building. So with all that said, we can start with some of the project history. Gary Jones and I talked a little bit about the Red Cat, the owners of the Red Cat, and the value that it brings to the community — as well as the quality and condition of the existing building.

We pursued this project and started by looking at renovations of the building but what we quickly found was that [to bring] ADA accessibility to the current building without making over 30% basically constitutes bringing the entire building to code in all facets. So this was pretty much an impossibility. As we looked at the electrical, the plumbing, the utilities, we were going to clearly exceed all thresholds that would require that the entire building be then brought into compliance both structurally and through all the utilities, etc.

[Tearing] the building down was the most viable option, [because] to maintain the size and bring it to code would shrink the interior of the building to a point where it would be almost unusable.

It's been a mixed-use building since it was built to begin with. [It once] housed a paint shop, along with living quarters. So this is a mixed-use building that dates back, depending on whether you look at the assessor's cards or the water company's records ... it's been a mixed use building prior to any zoning that exists currently.

So as we embarked on looking it as a new building, we had a certain set of goals. The first goal was to preserve the Red Cat and its value in the community and it's place in the community for a longer term and next priority was to do a project that everybody in the town could really feel good about.

Oak Bluffs is my home and my love for Oak Bluffs, I think, is demonstrated on a daily basis. So with that said, we started looking at all the different architecture that exists around Kennebec and... that's why you see many of the dormers and the turret, which is consistent with the Norton [?] house. Paying respect to the Victorian architecture of Oak Bluffs was important and very consistent with all the things we love about Oak Bluffs.

So we then put on our planner's hats, similar to the ones you guys wear, [and thought about] possible development — stormwater will be added into the drainage system of the town of Oak Bluffs; have spoken with the highway department. There's no official protocol or applications or things to file to be able to do that. But it's consistent with what other buildings have done or said they would do in building new buildings in the downtown.

We then looked at wastewater capacity, which is always a big driver of the conversation on downtown with the wastewater being at capacity. Expansion is extremely difficult right now in the downtown area of OB. So we decided that the best-case scenario is to work with what we had and either use existing capacity or to reduce as a responsible planning effort. So we have reduced the intensity of the use of the project based on wastewater by about 35 gallons a day. By limiting to 52 seats from 55 and using the additional seats to cover the wastewater for the additional bedroom added upstairs.

The next step in planning became — how are we going to heat. How are we going to deal with fossil fuels, all of those things and it came very clear that the island through the Martha's Vineyard Commission, as well as through pending town meeting non-binding referendums that there's a goal to reduce or remove fossil fuels from our community. [So] we wanted to start well ahead of that curve. All utilities — heating and cooling are done through electric heat pumps. Those electric heat pumps will be on the roof hidden within the roof deck behind a four-foot enclosure, so they won't be visible to the public in any way.

The only fossil fuels to remain on the project will be to run the gas oven in the actual kitchen of the restaurant — technology has not reached a level where you can possibly produce that type of food, or that amount of food without a gas stove in there. So we're removing our fossil fuels. Currently there's two really old, highly inefficient kerosene monitors. If anybody spent any time around a kerosene monitor then I'm sure you understand why we should get rid of them.

Then came handicapped accessibility. The building currently has no ADA accessibility. There's a ramp that is by no means within compliance on the left side of the building. And if you come in, you go through the kitchen and make your way through the back into the dining room. One of the things about universal access, it's important to pay respect to people that have challenges and they should enter the building in the same way that everybody else does it shouldn't be secondary or an exclusionary type measure for them to be able to enjoy the same things that I'm able to enjoy. So with that said, the slope of the street creates some challenges, [which is why] you see that the doorway is moved to the far right on the front end. Typically you'd want to place door in the center to be consistent with Gothic architecture period architecture, but due to the slope of the street and the width of the lot, there's no way to get the actual proper ADA compliance slopes and keep the door in the center. So, it shifts to the right end and that becomes the entryway into the restaurant.

Ewell, maybe you could give me some clarification — not sure how interested you are in the interior portions of the building. I think mostly you're interested in utilities and aspects of the site with it. Would that be correct?

Ewell Hopkins: Yes, it's very clear what the scope of the special permit request is [for] the two and the actual layout of the units is not within the purview of the application.

Brian Packish: Next would be trash, and basically it's consistent with how trash exists now. You'll go up the left side of the building and take a right into the kitchen or upstairs to the apartments or you would walk forward and there will be a gate with an enclosure there that will house the trash.

There are some other challenges in building — one is excavating in the downtown and, you know, how do you navigate construction, there's currently a town-owned lot across the street behind the Lampost that's leased by Eugene Bryce for the next 12 months and the Lampost rented it from him for their construction staging last year, and we have entered an agreement with Mr. Bryce to lease it for the upcoming year over the winter so that we can have four parking spaces worth of storage. There are also three loading zones out front.

And this would be a winter project (Oct. 15 to May 15) and it's a quieter time and with those loading zones, people will be able to pull up, drop off and then pull down on to Lake Avenue there. Parking is either around the Flying Horses or up around the church or all the way up around the park. It is an offseason construction. I spoke with the chief of police and we recognize that there'll be some times when we're going to need [to address] some details to work through traffic, particularly during the early phases, the tear down to the building as well as the excavation, installation, foundation.

We just need large-scale equipment and trucks for multiple trips. But we're working closely with the chief of police to work out a protocol and a lot of that will be developed, mostly on an as-needed day-by-day basis, but we do recognize that we'll have a need for that as well.

Site utilities, trash, lighting — lighting will be consistent with the electrical code. We will have lighting at each doorway. We don't really have need for much lighting, but it will be consistent with the state electrical code around commercial buildings and multifamily dwellings, etc.

I would expand upon fire suppression. A building [like this] will need to have full and complete sprinkler systems inside and all the exterior building materials will be of non combustible nature, such as back of cement siding, but it will be reducing fire risk.

As far as parking is concerned, we're in the B1 district and so [there is] parking mitigation. With that said, it's an existing 55 seats. It's an existing three bedrooms, we're going from 55 down to 52 and going from three bedrooms up to four, so the question I think becomes is the one bedroom, something that should be responsible for a parking space as an addition or does that one bedroom receive the credit of the reduction of the three seats. Four seats equals one spot under the bylaw so is it a wash? Is there a need for parking for the one-bedroom, that's up to you guys to decide. So with that said, I'll stop talking and we can move into the next phase.

• Public Comment

Ewell Hopkins: Thank you Brian for that thorough overview of your application. I do want to be cognizant of the public. If anyone has not had a chance to go to the town website, to the Planning Board section and look at the detailed drawings, would you “*9” or indicate by raising your hand if you have any questions about the overall look and feel of the application before I move on.

The Planning Board members will have questions after we hear from the public. So I've instructed them to withhold their questions until after the public has had an opportunity to make comments and ask questions, so that they might inform our questions. I ask that any public questions be directed to me and I will determine then if the applicant should respond at this point or after we close the public hearings.

Are there any questions about the overall look and feel?

Perry Patterson: I didn't see the height of the building. That's my only question. It's a beautiful design. [Assuming] the height goes to 35 feet, but does that include the heat pump on the top of the roof with the fencing around it or does that push it up another five feet or something?

Ewell Hopkins: Brian, would you like to comment at this point before we move on?

Brian Packish: Oh, sure. Actually zoning does afford 35 feet up to 50 feet with a Victorian element. I believe we're currently at 33 ½ feet, so we are within the 35 feet. And then below it with total completion to the top of the turret, to the top of the ridge line, and the roof deck is just slightly lower than the actual ridge itself.

Perry Patterson: So it might go up a little bit higher than that 35 feet was the question around the heat pump on the roof.

Brian Packish: No, the heat pumps will be recessed into the roof. The highest point is actually the ridge and therefore the ridge is what's at roughly 33 ½. We've got a little bit of leeway there. We didn't want to be too hard right up against the 35 but we will we will not be exceeding 35 feet.

Perry Patterson: Okay, great. Thank you.

Ewell Hopkins: We will come back to more questions from the public in a moment. That was a technical question I thought was important to answer at this point. At this point, let me explain the process for seeking public input and first give some history on this project, the history of the project is the project started initially on December 19, 2019.

When an application for special permit and site plan review was filed with the town clerk and received by the planning board on that same day of the project was referred to the Martha's Vineyard commission as a development of regional impact pertaining under [several criteria] points.

We've received several letters and they are all posted on our website. There were many letters in support. There are also letters questioning the applicability of the application and whether it qualified under 7.2. and I will talk to that, more specifically to the board when we get into deliberations.

I think the balance of the letters were speaking to the importance of the institution of the restaurant and its commitment to the community and its importance to the character of the community and also speaking to the residential portion of the property that currently exists.

I'll ask if anyone in the public is in favor of this application and would like to speak and be heard, specifically on the record beyond what may have been submitted in writing. Also understand that all those letters that I referred to are posted on the website. I believe I characterize them at a high level for everyone to understand.

I see no public members wanting to speak in favor beyond current testimony. Are there any public comments in opposition, as proposed?

So just to verify: I've asked for public comment in support and I've asked for any public comments in opposition beyond what is already been characterized. And I said, I will speak to some of that opposition in deliberation. Hearing none, I'll move on. If there are any still outstanding questions about the application in general?

There's one clarification question pertaining to the special permit as it applies to setbacks.

There are setbacks guidelines listed, but the applicant is not requesting relief from any setback zoning requirements. So there's no special permit request for setbacks. Hopefully that answers the question.

There is a question: *Are the new residential units not considered for affordable units as outlined in the goal of the Master Plan?* We will speak to that in terms of opposition. There is no requirement under the application that Affordable housing units be built as a part of this special permit request. The issue of affordable housing and its impact on the project was addressed by the Martha's Vineyard Commission and will be discussed in the description of the decision which Adam Turner will be presenting on current conversation.

Mark Leonard: I have a question on the setbacks. According to the plan, it's like 18 inches from the property line. Isn't the setback [requirement] five feet and then you can be grandfathered if it's closer? I don't understand why it's being bypassed when it's clearly not within the five feet.

Ewell Hopkins: I'm not sure which plans you are looking for but I will let the applicant speak to this but per the application that we have in front of us, there's no request for relief on setbacks. Chuck, or Brian — do you want to comment from a technical perspective?

Brian Packish: Sure, I'm happy to address that. But, you know, obviously it's important when working with these types of projects and following along to stay current on the most current plans that are posted on the Planning Board website. It clearly reflects that we are in complete and full compliance with all setback regulations for the town of Oak Bluffs and will not be needing any form of relief.

We have zero on the sides, zero in the back, and due to the pre-existing nature of this building, we are compliant with five feet on one quarter and four feet on one corner on the front so therefore, we are in complete and total compliance. So it's been a fun point of conversation in the shadows, but it's something that has been addressed professionally.

Ewell Hopkins: Okay, great. I wouldn't characterize it in the shadows. I've been turning a lot of light on this application.

Brian Packish: You've been trying, that's for sure.

Ewell Hopkins: And when I make any definitive statements such as the applicant is not seeking any relief, that's written into the decision. **So therefore, if they were to seek relief, it would void the decision** the board would ultimately vote on. I hope my words were very clear that no relief is being sought in the application in front of the Planning Board.

At this point I am going to close the public portion of the conversation. There's no need for the applicant to respond to any further [questions]. I do want to ask the Board before I close the public comment period and move on to deliberations, if any board members have questions of the public input that has been made.

JoJo Lambert: I have a question for Brian ... about [fire safety]. If a fire breaks out [on second or third floors], besides coming down the stairs, is there any other [egress]? The only access to get out [would be] coming down the staircase. But if the fire is going up, is there a plan for that?

Ewell Hopkins: I will ask the applicant to hold off on answering that. When we get to board deliberation, JoJo, I'm going to ask you to ask all your questions [then]. I'm asking the board if they have any questions pertaining to public input that we've received so far.

I think it's important because this is a closing of the public hearing. I want to take a roll call of the board and ask each board member to state their name, and that they have no additional questions of the public.

Bill Cleary: Bill Cleary, I have no questions.

Mark Crossland: Mark Crossland, no questions.

JoJo Lambert: JoJo Lambert, no questions.

Erik Albert: Erik Albert, no questions.

I will close the public portion of this hearing and move on to board deliberations.

Board Deliberations on Bylaw 7.2

Ewell Hopkins: I've included in your packet the sequence of how I would like to go through this deliberation. I'm going to walk through the applicable bylaws and then go through the points of conditions associated with that bylaw, and give you an opportunity to respond in a structured way to each point.

At the conclusion of that I'm going to move on and have the decision presented by the Commission and their conditions so that you understand those two points.

Then we will review parking mitigation requirements in the 5.1.5 and then we'll do "benefits, detriments and neutral" [on each point] and move on to a motion if appropriate.

The [applicant has] applied under 7.2, Conversion of an Existing Building into a Mixed Use Commercial with apartment units, and under 5.1.5 [Parking in the B1 District].

The purpose of this Section (7.2) is to:

- Allow mixed use development in the B-1 zoning district while maintaining the unique character of Oak Bluffs by encouraging the preservation of existing buildings within the historic context and setting in which they were established.
- Provide for a variety of housing needs, including reasonable, affordable accommodations for a fluctuating work force and opportunities to create moderate income and senior housing units, both of which would promote economic growth and stability in the existing B-1 district;

- Permit uses that promote rehabilitation and conversion of existing buildings in a manner that maintains the visual character of surrounding areas and reflects the architectural scale of existing development within the district;
- Minimize visual and functional conflicts between residential and nonresidential uses within and abutting the B-1 district; and
- Allow for more compact development than may be permitted in residential zoning districts to reduce the impact of sprawl and traffic congestion.

That is the purpose of this by law. It is my position as chair that this application qualifies under that purpose, and I would like to bring to the board's attention that there is some question from the public and we heard it from the public as well in writing, that under point two. And I'll read again verbatim "*provide for a variety of housing needs, including reasonable, affordable accommodations for both a fluctuating workforce and opportunities to create modern moderate income and senior housing unit, both of which would provide economic growth instability in the B1 district.*"

The question that we have been asked as a board is whether or not there is a requirement for any specific type of housing — affordable, workforce, or not required — to qualify under this bylaw. My position is that this provides for a variety of housing needs and it gives examples of priorities, but it does not exclude or require a certain type be included in the application. So I believe that the housing that is proposed for this application qualifies under 7.2.1.

Are there any comments or questions from board members? Okay, I think, I think it's important to understand that this has been a contentious point. If you don't have any questions, it might be helpful for the record, if you could comment on why you concur or agree with me or if you're abstaining from this decision. So I'd love to hear from the board members on this point.

Bill Cleary: My thoughts are that although I would love to see year round or year round affordable housing, one or both concepts met in this particular project, I understand that what with the cost of purchasing properties, the cost of construction and renovating properties... really kind of prohibits that type of housing surplus in our town, that type of housing availability in a downtown area for a project like this. So, although I would personally love to see ...year round and affordable housing, I could totally understand why it's not necessarily possible with a project like this, and it appears that mitigation fee [\$80k imposed by the Commission] will contribute to our affordable housing needs on the island, which I know we're aggressively, as a town, trying to fulfill.

Erik Albert: Yes, the MVC... There's \$85k going to affordable housing and when we did the top-of-the-shop bylaw... it was to allow things like Phillips [Hardware], or if they wanted to do above Ben and Bills, where we always thought if there is three-story zoning, that you could put some apartments up there in a mixed use manner. But I don't see why the affordable has to be in there, and like I said, the \$85k that the MVC [imposed] —that seemed plenty.

Mark Crossland: I agree. The \$85k is sufficient for affordable housing.

JoJo Lambert: I'm good with it to too. And I agree with what everyone said too. I think it's a really nice building. And I think it's going to be, you know, really an asset to the to the community, to downtown

Ewell Hopkins: As Chair, I want to kind of sandwich these comments into the record to say that, from my perspective, my interpretation of the purpose of the bylaw calls for five bullet points under purpose under the specific bullet point of housing. I emphasize providing a variety of housing needs and I do not see language that requires an affordable component associated with purpose. So therefore, I concur that the applicant has applied for the right special permit to move forward in this project, specifically the applicant has applied under 7.2.4 which is conversion of existing or tear down and rebuild with expansion of existing building to apartment units.

This will bring up some question later on as it pertains to calculating parking mitigation. I think the applicant has been very clear in their interpretation or rationale. When we get to that point, I will also want to comment and get your input. But let's move on from that point.

The next point that I want to have each board member comment on is under Conditions of 7.2.5 The first one is:

1. In any conversion, reconstruction, restoration or alteration of and to an existing building of two stories or more in the B-1 District under this section, the ground floors of the buildings fronting streets, shall be reserved for nonresidential use.
2. Circulation and access to and from dwelling units may be allowed on the ground floor level.

Does anyone have any question whether or not the application of complies with [either] bullet point? Seeing none, I'll move on.

7.2.5.2 Historic: Buildings or structures that are listed or eligible for inclusion on the National Register of Historic Places and/or the Massachusetts Register of Historic Places or within a local historic district as established by M.G.L. Chapter 40C, shall be converted, constructed, reconstructed, restored or altered to maintain or promote the status of the building or structure on, or eligibility for inclusion on the State or National Register of Historic Places. The design of new construction shall otherwise be in harmony with the existing neighborhood.

So my question to confirm, for the record, is that I believe the design is in harmony with the existing neighborhood... has the applicant done their due diligence in terms of the National Register and other Historical Commissions that may have a purview or questions about the building. Brian, could you comment?

Brian Packish: Yes, we, we were approved by the Historic Board for demolition.

Ewell Hopkins: Any concerns or questions from board members on that topic? Seeing none, I'll keep moving on.

7.2.6.1 General Standards: To be eligible for consideration for a Special Permit under this Section, the proposed development shall meet the following standards (unless specifically waived by the Planning Board under Section 7.2.1.3):

1. The commercial structure to be converted, reconstructed, restored or altered shall have variation in its overall architectural design, and plans depicting building elevations, building setbacks and exterior details (roofing, siding, glazing), of the proposal, including abutting

- structures, shall be included in the applicant's construction documents in order to assure compatibility with existing development.
2. No building shall exceed the height currently allowed in the existing district.
 3. Size of units – Units shall conform to the provisions of the State Sanitary Code, 105 CMR 410, any other state regulations as may be applicable, and with the rules and regulations of the Board of Health.
 4. Bathroom, kitchen and other facilities – Units are not required to contain facilities and may share toilet, kitchen, or other facilities. Toilet and shower facilities shall conform to the provisions of the State Sanitary Code, 105 CMR 410, any other state regulations as may be applicable and with the rules and regulations of the Board of Health.
 5. All roof mounted mechanical equipment must be enclosed to reduce the noise of operation and eliminate visibility of such equipment from the equivalent of an adjoining second floor level. In no case shall roof mounted equipment or the accompanying enclosures exceed a height of 6 feet above the roof deck, or occupy more than 30% of the area of the roof surface.
 6. Building orientation, layout, and configuration shall be designed to provide adequate light and air for the proposed and adjoining buildings.

Chairperson Hopkins went over each of the six points under 7.2.6.1 Standards (above).

Ewell Hopkins: Re: Point 1: the applicant fulfilled that, in my opinion, and we have all of that information.

The [second] point ... We confirm that point as well.

The third point... we have sign-off from the Board of Health.

The fourth point... CMR 410 and Board of Health, we have approval there.

Fifth point... We have a commitment there and the percentage of occupancy of that equipment on the roof is within that guideline.

Bill Cleary: [Will it] be soundproof?

Brian Packish: Yes, [it's] a modern day heat pump. It's closed in and the sound emissions ... are negligible at best. The biggest concern with sound or smell [is] from exhaust fans... mostly on the Madison (?) inside which would be the right side of the property. We're taking the extra measure to run the venting in a brick chimney, all the way up to the top, which actually will make the venting higher than any of the buildings around it. So that will let any fumes escape.

Ewell Hopkins: The building orientation and layout of Point 6 — I have confirmed and worked through specifically the handling of drainage and storm water management. The applicant has walked us through their plan to hook into current town infrastructure.

All of these are conditions, in my opinion, to the decision.

The applicant has addressed storm water management and has letters to that effect in the application. Does any board member have questions about hundred-year storm conditions or drainage plans as it pertains to the orientation of the building? I'm hearing none.

Moving on to... internal roadways, not applicable; walkways and parking areas. Parking is addressed in a moment. One question I do have Brian, is access. Do you have access to all sides or just the one side for deliveries and the front? Will there be a crawl space on the far right, and in the back?

Brian Packish: Deliveries will happen on the left side of the building. Some I imagine might go through the front door.

Ewell Hopkins: Will you be able to walk around the entire building?

Brian Packish: Yes. I mean, you, you won't [be able to do] jumping jacks all the way around the building, but you will be able to physically access all sides of the building. And to the point of deliveries, which I don't think we've expanded upon, one of the big challenges is that they currently have to receive deliveries for every product every day because the current building has no storage. So by adding the basement component for storage and the additional storage that's on the first floor, we'll be reducing deliveries tremendously.

Ewell Hopkins: Wonderful. And then finally, I'm going to skip 5.1.5 for parking because I want to have a specific conversation there.

Are there any questions from board members on any of those last three points (service access, wastewater or utilities)? Before we move on to the decision from the Commission, do board members have any questions as it pertains to the Conditions and the General Standards of the 7.2 bylaw, in terms of how it applies to this application?

Hearing none, I will move on.

➤ **Martha's Vineyard Commission DRI 695 (Adam Turner)**

Ewell Hopkins: Adam at this point, I would appreciate it if you would present the decision and any context that you have from the Commission—we have the conditions listed in the board member's packets, but the floor is yours.

Adam Turner: You've gone over most of [our findings] in Brian's presentation, [so] I will go over the chronology. It was referred December 19th, we didn't get started until New Years and we first looked at it from the demolition perspective. The building is a very historic place, we really looked at the context of all the other buildings in the area and we reached out to Pam Melrose, even though it's not in the district, to get some guidance and the first thing we did is really look at the demolition.

We had a staff-applicant meeting with Brian and Chuck in mid January and looked at the development. We had a site visit on February 3rd and looked at the condition of the building, and once we did, it really came into context that the demolition was necessary, that it was out of code. No matter how historic it was and it is a pretty historic building, there was no way that it was going to be reconstructed or redefined.

The LUPC found that Brian and his team had produced everything that we needed for public hearing. And I do want to commend them. In my years here, it was the most comprehensive application I think I've had. Every single thing that we asked for, he gave us. February 20 we did have the public hearing.

Affordable housing was really the only issue that we had and how that policy was going to apply. On March 9 we had the post-public LUPC. Again, the MVC policy assesses affordable housing based on the intensity of use and other kinds of things. In this case, we decided that we weren't going to assess the restaurant as that's already there. And then it was a question of how many units, new units, he was creating and on March 9 we stopped because of [Covid-19].

We had a public deliberation schedule [and] we resumed April 9 and made a decision — a compromise between Brian and the Commission was accepted on the affordable housing. We also accepted and this is not an insignificant thing, his energy offer ...every cook knows you definitely want a gas stove, so we allowed that. There was a recommendation on the setback, which I believe that Brian and this board has taken care of and the application was approved.

There was significant support from the community. I want to point that out, we probably got 50 letters, especially for the Red Cat.

And again, we looked at the demolition, which was approved, we looked at everything that Chuck had given us in terms of all the perspectives. We were very confident that the architecture and the scale of the building when it is redeveloped would be totally compatible and actually turn out to be a benefit because we felt like the deteriorating condition the existing building sort of brought the neighborhood down

On April 23, we made our final written decision, with two conditions: for affordable housing [\$85k payment]; and around energy efficiency.

We also included a recommendation, it wasn't a condition, that this board looking at the setbacks.

So I do want to say that it was strongly supported by the Commission, I think everybody thought it was a good project.

Ewell Hopkins: Any questions from the board in terms of the two conditions or the process by which the Commission took to review this application?

The relationship between the Commission and the Planning Board in the town of Oak Bluffs is something very important to me. I appreciate Adam presenting this in person as this has become the custom for referrals that we've made to the Commission. So please, if there are any questions [from board members] about this decision, now is the time. If not, I'm going to move on to the next topic.

Thank you, Adam.

• Board Deliberations, Bylaw 5.1.5 – Parking Mitigation

Ewell Hopkins: Let's now review parking mitigation requirements. It's interesting — [the 7.2] bylaw refers to parking requirements and then it refers you to 5.1 of the general regulations for off street parking requirements, but it does not integrate the two. The two are separate. So the applicant had to file for two special permits. On hindsight, having been involved in the creation of the top-of-the-shop bylaw, my input to the board is that [parking] should have been better included and we shouldn't have to bounce between the two [bylaws] but that's currently the state of affairs.

That said, I asked the Vice Chair of the Board to take a look at Section 5.1.5 and walk through his rationale with the rest of the board as it pertains to parking mitigation for this application. So let me turn the floor over to Erik.

Erik Albert: This predates me being on the board, but my understanding, and the way we've always interpreted was, for instance — Hollywood Nails down the street on Circuit. They changed the use but we did like a little horse trading because they had [existing] rooms, so say you took a building that wasn't existing like what they're doing at Phillips. They don't have [anything] above the top of the shops, they would have to pay into the parking requirement, but if you have an existing building that's already there. We don't make you pay into the parking requirement, unless there's a change of use...at least that's the way we've been doing it. And with this project, it's plus one bedroom and it's minus three seats and it's four seats per spot and one spot per bedroom. So since we're adding a bedroom and we lose three seats. It's kind of a... I don't really see any change of use there.

Ewell Hopkins: Are there comments from other board members? He walked through that fairly fast. I understand it because we discussed that prior without violating Open Meeting Law — any questions from the board members in terms of parking mitigation and how it would be calculated?

Bill Cleary: Yes...

Ewell Hopkins: Bill, I want to make one comment first, it's clear that the applicant does not have the ability to provide parking on their site or [provide] off site parking. So they have applied for mitigation payment in lieu, so I'm not pre-empting them...their formal request is to be considered for the payment in lieu of being able to provide two spots. The question is how many spots are we are we going to determine to be the criteria by which we calculate the [fee].

Bill Cleary: Brian can you walk us through how the apartments will be rented, what the use of those specific units will be, it might help us understand the relevance of the parking aspect.

Brian Packish: Sure, we applied for parking mitigation as well, simply because whether it's applicable or not that's up to you guys to decide, but it does require a two-week advertisement and public notice process and rather than get all the way through the hearing around the special permit and then spend another two weeks advertising and potentially two weeks before getting on a meeting, and extending the permitting timeline by an additional month, that's why we are applying for the special permit around the parking mitigation.

So with that said, the use of the apartments upstairs — they're market-rate rental units and the distinction to that is really important. Others have decided what that means... to some that means a nightly rental, [to others it means seasonal or year round].

I'm hoping the project outlasts all of us. And so with that said the only definition as to how the units are going to be used now and into perpetuity is at market rate. So, whether they're sold as condominiums, like the place across the street...(The gentleman Perry, who was asking about the height requirement is the real estate agent for one [used as a year round] that's for sale currently across the street, market rates speak specifically to the financials... so basically [they will be] rented at market rate values and be sold at market rate values and not discounted in any way.

With that said, we need to get the restaurant in there. And then we need to figure out what is actually viable. For season one, because will be finishing [with a] May 15 scenario, they will most likely be short term rentals. I can almost guarantee that they will be and then depending on feedback for the second floor, because I imagine there's going to be something between the restaurant and the four apartments, find that it's not viable and they need to shift into a different type of model more of a year round [situation].

One of the restaurant owners has expressed an interest in having [an apartment] just for their own space so that they can get some peace of mind. The top floor, which is the third floor and most likely will stay [short term for awhile]. And if we decided to condo out, they could become year round.

The other thing ...everybody's talked about affordability and obviously we've made concessions and things of that nature. These units, by their scale and size and location, speak to affordability. The condominiums that sell in the downtown sell pretty much at the bottom of the market rate just simply because the square footage speaks to affordability. They're not 10,000 square feet, 5,000 or 2,000 — there is a smaller amount of square footage. Therefore they generate [lower] valuations.

Now we could all argue what's affordable, but at the end of the day, in the grand scheme of market rate, these will be the most affordable market-rate units in our downtown. So hopefully that helps answer your question

The parking mitigation bylaw speaks really to intensity, it's a bylaw that's driven by intensity, and we have vast reductions in intensity on the restaurant side by reducing deliveries, probably by 75% I would imagine so... wastewater is a reduction in intensity, deliveries is a reduction in intensity, energy is a reduction in intensity. It's pretty much a reduction in intensity across the board.

I guess the question is: Does the additional one bedroom generate enough intensity to overrun all of those reductions in intensity. My position would be that it doesn't. But I'm not on the board. You guys get to decide.

Ewell Hopkins: I'd like to jump in at this point for the rest of the board. So you can hear some of my thinking ... I am confused on one point — the applicant and their original application indicated that there was [an existing] one unit, three bedroom configuration in place and in the presentation today, it was very clearly stated that they are independent units with individual locks on each door. That's important for the board to understand. Are we going from one unit that has three bedrooms, because this is about parking and you know you can have a three bedroom apartment and have two kids, each having their own room and only having one car or you have three units where it's more possible that you'll have three cars with one car with each unit.

So if you consider it to be three individual units, then the increment is one. If you consider it to be one unit with three bedrooms, the increment is three from that perspective.

We have never done a complete tear down. So when we look at applicability of 5.1.5 and we talked about the fact that there is a significant increase in square footage of the entire project... we have precedent, not to count the seats. We didn't count the seats of the restaurant at the Lampost across the street when they did a major renovation. In this case, if we were to count the seats and the restaurant that would be equivalent to 13 slots, because it would be one slot per for under 52 [restaurant] seats.

So the question for you as a board is ... Erik has made a rational argument that there is a wash between the reduction in the number of seats in the restaurant and this speaks to intensity and the increase of one unit upstairs. I want to hear from the other board members if you concur with [his] logic or not.

Mark, can you tell me how you weigh in on the calculation of [parking spots] with the increase?

Mark Crossland: [A wash]

Ewell Hopkins: Okay, Bill, how do you feel?

Bill Cleary: My thoughts are that it's a wash. Also, I think the zoning bylaws allow us the flexibility in terms of parking. If the apartments are going to be used for short term rentals, which is kind of what my question was [about how they would be rented]. There's probably less need for parking spaces, especially with the boat coming into Oak Bluffs. And my opinion is, it's a wash.

JoJo Lambert: Yeah, I believe it's a wash, as well.

Ewell Hopkins: Okay. I will honor the trend of the board and concur that there will be no additional parking requirements and there will be no mitigation fee paid to this application. Let's move on to detriments benefits and neutral [of the application].

1. The first: social, economic and community need which are served by this proposal —Benefit, detriment or neutral?

JoJo Lambert: That's beneficial.

Bill Cleary: Benefit.

Mark Crossland: I think it's a benefit because it's well thought out, everything's been addressed.

Erik Albert: Benefit.

Ewell Hopkins: Benefit.

2. Traffic flow, safety, including parking and loading.

JoJo Lambert: Benefit

Bill Cleary: Neutral

Mark Crossland: Benefit, [with] updates for storage.

Erik Albert: Benefit

Ewell Hopkins: Benefit.

3. Adequate utilities and other public services.

JoJo Lambert: Beneficial

Bill Cleary: Beneficial

Erik Albert: Benefit

Mark Crossland: Benefit

Ewell Hopkins: Benefit.

4. Neighborhood character and social structure.

JoJo Lambert: Benefit

Erik Albert: Benefit
Bill Clear: Benefit
Mark Crossland: Benefit
Ewell Hopkins: Benefit

5. Impact on the natural environment.

JoJo Lambert: Benefit
Erik Albert: Benefit
Mark Crossland: Benefit
Bill Cleary: I appreciate the Waikiki pumps. It's a benefit.
Ewell Hopkins: Benefit

6. Potential fiscal impact, including impact on town services tax base and employment.

JoJo Lambert: Benefit
Erik Albert: Benefit
Bill Cleary: Benefit
Mark Crossland: Benefit
Ewell Hopkins: Benefit

Ewell Hopkins: All benefits, [one] neutral and no detriments. There is no adverse effect of this proposal, [The detriments] will not outweigh the benefit impact to the town or neighborhood. I would entertain a motion first on 7.2 bylaw based on the review of this project. Will someone make a motion to approve or deny this site plan under by law 7.2 and state if [with] conditions. I can't make the motion as the chair, someone else has to [do so].

Mark Crossland: Oh, I make a motion to approve.

Ewell Hopkins: Mark, any conditions in that motion? Okay, there's a motion on the floor to approve under 7.2 with no conditions. Is that seconded?

Bill Cleary: Seconded

Ewell Hopkins: Any discussion? None. Roll call vote [for the] motion on the floor.

JoJo Lambert: Aye.
Mark Crossland: Mark, approve.
Erik Albert: Erik, aye
Bill Cleary: Aye
Ewell Hopkins: Aye.

Ewell Hopkins: Motion passes. And [now] I would entertain a second motion for a special permit for parking in the B1 district under 5.1.5.

Mark Crossland: Motion to approve. No conditions.

Ewell Hopkins: Mark Crossland, and how many parking spots?

Mark Crossland: No parking spots.

Ewell Hopkins: Okay, is that seconded?

Erik Albert: Albert, second

Ewell Hopkins: Any discussion? Hearing no discussion, [roll call vote]:

JoJo Lambert: JoJo, aye

Bill Cleary: Aye

Mark Crossland: Mark, aye

Erik Albert: Albert, aye

Ewell Hopkins: Ewell, aye

Ewell Hopkins: Passes unanimously, congratulations applicant. You are approved on both of your permit requests.

Brian Packish: Thank you. I appreciate everybody's time. I just want to take one quick comment because I'm looking through the call and I value and love everybody who's on it, but I see our longtime friend of the Planning Board, Robert Fehl, on the call. And I don't want to miss an opportunity to say hello and how happy I am to see that he's still engaged in town affairs, just want to throw that out there.

Ewell Hopkins: You know, one thing that I learned is that when you get the answer you're looking for, you should stop talking. But I see that your architect has his hand up — if he really wants to talk, the floor is yours. Mr. Sullivan.

Chuck Sullivan: I just wanted to address JoJo's question about the stairway, and it does meet all the federal building codes. The building is sprinkled, the stairway has firewalls and dual fire-rated doors. It is not open to the to the restaurant portion. There's not a door from the restaurant to the firewall. So that stairway enclosure is independent only for the for the apartment and further, each window still has an egress window in if a fireman needs to get out or needs to get in or a person needs to get out. So because of the sprinkler, because of the fire rating, because it's closed off from the ground floor, and because there are egress windows from each bedroom — that meets the requirements. So there's no fire escape or second stairway, but it meets the code.

JoJo Lambert: Thanks, Chuck.

Ewell Hopkins: We have one other bit of business before I ask for a motion to adjourn. I want to bring to the boards attention— and this predates Bill on the board, but as a town we have been actively involved in a lithium battery installation by Eversource on Edgartown-Vineyard Haven Road.

The town of Oak Bluffs, which I was a part of, put together a memorandum of understanding between the town of Oak Bluffs and Eversource and we have referred this to the Commission for review that they're currently reviewing this application. And when the Commission is finished with their application, because they have been exempt from any town zoning, they will not be required to come back to the Planning Board for any of the permitting process. We will not see the Eversource project in a formal capacity. If you would like a presentation beyond your ability to attend the hearings at the Commission level, I'm happy to schedule one but I told them I was reluctant to bring them in front of the Planning Board when

we had no authority. I did not want to send the conflicting message that we had any input or authority in this matter at this point, going forward so that decision is a 76-page exemption document I included it in entirety for all of you to read.

They're exempt from municipal level zoning and that's what our authority is so the project is at the Commission if you have any questions or issues associated with it. Please direct them to me or write a letter to the Commission. It's a big project. That's why I wanted to make sure you guys saw it as soon as we got it. Hearing no questions. I'll entertain a motion to adjourn.

JoJo Lambert: I make a motion to adjourn.

Erik Albert: I'll second it. Albert, second.

A roll call vote was taken and the meeting was adjourned.

Adjourn

Meeting was adjourned at 11:35 a.m.

Minutes approved June 11, 2020

Documents on File: Agenda; board packet