



RE: Menotomy Building  
14 Kennebec Ave.  
Oak Bluffs, MA, Map 9 Parcel 29

Town of Oak Bluffs, Massachusetts  
Office of the Planning Board  
P.O. Box 1327  
Oak Bluffs, MA 02557  
508-693-3554 x154  
PLANNING BOARD

**NOTICE OF DECISION      May 15, 2020**

**RE: The Menotomy Building Special Permit and Site Plan Review Application**

**GJ and BP Holdings LLC  
Gary Jones and Brian Packish  
14 Kennebec Ave., Oak Bluffs, MA  
Map 9 Parcel 29, zoning district B1**

The Oak Bluffs Planning Board held a Virtual Public Hearing on Friday, May 15, 2020 at 10:00 a.m. via Zoom on the application of the referenced petitioners seeking:

*A Special Permit and Site Plan Review under Section 7.2 of the Zoning Bylaws (Conversion Of An Existing Building To Mixed Use (Commercial With Apartment Units) and sections 10.3 and 10.4 or any action related thereto, to demolish an existing mixed-use building (The Red Cat Restaurant) and replace it with a 52-seat restaurant and four (4) one-bedroom apartments on the second and third floors.*

**DECISION:**      A motion was made to grant the special permit and approve the site plan based on the submitted plans and findings under Zoning Bylaws 7.2.6 Mixed Use of Section 7. The Board, consisting of Ewell Hopkins (Chair), Erik Albert (Vice Chair), Bill Cleary, Mark Crossland, and JoJo Lambert voted 5-0 to grant the special permit and approve the site plan with no conditions other than those imposed by the Martha's Vineyard Commission in DRI 695.

**Procedural History:**

**History:**

12/16/19      Special Permit and Site Plan Review application filed with Town Clerk and received by the Planning Board.

12/16/19      Menotomy project referred to Martha's Vineyard Commission as Development of Regional Impact under 3.1h (xxx); 32.a (xxx) and 32.b (xxx); 3.3a (xxx) and 3.3b (xxx); 3.4d (xxx); and 8.1b (xxx) by Ewell Hopkins, Planning Board Chairperson.

- 12/17/19 Special Permit and Site Plan Review application distributed via e-mail to the Board of Health, Conservation Commission, Building Inspector, Director of Public Works, Police Chief, Fire Chief, Sewer Commissioner and Water District. Posted on web site in a project folder.
- 04/24/20 Project approved by the MVC, DRI 695 per April 24, 2020 email from Adam Turner.
- 04/27/20 Notice of Planning Board Public Hearing posted at Town Hall and on web site.
- 04/27/20 Notice of Planning Board Public Hearing mailed to abutters (and abutters of abutters) within 300 feet, the applicant and abutting planning boards.
- 05/05/20 Second mailing to abutters after changing hearing date from May 14 to May 15.
- 05/01/20 First Notice of Hearing published in Martha's Vineyard Gazette (*MV Times had suspended print edition*).
- 05/08/20 Second Notice of Hearing published in Martha's Vineyard Gazette.
- 05/15/20 Planning Board Public Hearing**

**General Findings Resulting from MVC Hearing:**

1. The Site is located at **14 Kennebec Ave.** in the B-1 Zoning District shown on **Assessors Map 9 as Parcel 29**. The building is known today as **The Red Cat Restaurant** with a 3-bedroom unit above.
2. The building was originally constructed in approximately 1888 according to MACRIS (1858 in Assessor's Records) and was originally used as the William H. Davis Paint Shop. It was part of the Oak Bluffs Land and Wharf Co. development, a secular alternative to the MV Campground Meeting Association. The central portion of the existing building remains from the original structure, but many alterations and additions have been made over time, most without any sort of permitting. The front porch was added in 1984 and enclosed in 1987. The building formerly housed Zapotec restaurant. –*Martha's Vineyard Commission DRI 695*
3. The building is currently a 55-seat restaurant on the first floor, with a 3-bedroom residential unit on the second floor, with unfinished storage space on the third floor. The residential unit has historically been used for daily, weekly and seasonal housing. –*MVC DRI 695*
4. The building is currently out of compliance with all ADA requirements, most notably the bathrooms (not accessible for a wheelchair) and the egress (which goes into the kitchen). The building has racked up an extensive list of code violations, and all mechanical systems have exceeded their lifespan. –*MVC DRI 695, Applicant*

5. Project description is 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 square foot mixed-use building with a 52-seat restaurant and four (4) one-bedroom apartments above. –*Applicant, MVC DRI 695*

6. The proposed plan will add a basement level to accommodate 380 square feet of walk-in cooler, employee bathroom and prep areas. The remaining basement area will include mechanicals and unfinished storage. –*Applicant*

7. The first floor will remain the Red Cat Restaurant — it currently has 55 seats and in this proposal will be reduced to 52 seats. The total increase in commercial square footage is 304 square feet including ADA accessible family bathrooms and decks, with a reduction of 3 seats in the restaurant to accommodate wastewater flow requirements. –*Applicant*

8. The proposed second and third floor will consist of two (2) one-bedroom apartments per floor [for a total of four (4) one-bedroom units]. The total square footage of the existing residential component is 975 square feet including decks and the total proposed is 2504 square feet with an increase of 1529 square feet and one bedroom. –*Applicant*

9. The total ridge height is approximately 34 feet and the B1 zoning allows for 35 feet in height. –*Applicant*

### **Applicable Laws and Decision Criteria:**

The application is governed by **Section 7.2** of the Zoning By-Laws (Conversion of an Existing Building to Mixed Use, Commercial with Apartment Units) and **Sections 10.3** (general special permit criteria) and **10.4** (site plan review criteria), among other provisions of the Zoning By-Laws, including MGL Chapter 40A § 9.

### **Specific Findings / Testimony:**

1. The Planning Board received several **letters of support** primarily of the Red Cat Restaurant, that are part of the public record — this includes testimony from: *Stevie Amaral; John Aucoin; Dan Aykroyd; Genny Hart Abbot and Phil Cordella; Holly Jenkinson Bario; James Belushi; Amy Billings; Ariana Binney; Peter Bradford; Teresa Brewster; Eugene Donny Brice; Captain Jeffery Canha; Caroline Cleaver; Herbert Combra; Max Dextraze; John Duryea; Peter Farrelly; Skip Finley; Ellen Gaskill; David Ginsberg; Alex and Mark Glover; Jessica and Andrew Green; Terri Hakala; Kate Hough; Emily and Philip Hunsaker; Mary Ibsen; Laurence Johnson; Maureen Kelly; Secretary John Kerry; Grace Korchmar; Cara Lane; Patrick Lyons; Frances McGuire; Julie Anne McNary; Mike Magaraci; Melanie Malloy; Bob and Gayle Mone; Anthony Moreis; Susie Nedley; Sarah Omer; Tony Omer; Jenna Petersiel; Sarah Pingitore; Kenny Ponte;*

*Phoenix Rogers; Susan Safford; Kristine Scheffer; Robert Stafford; Larkin Stallings; Gina Stanley; Maggie Swift; Jessica Tartell; Rich Tedeschi; Christian Thornton; Matt Viaggio; Mark Wallace; and John Wojtkielo.*

2. The Planning Board received **two letters of opposition** from *Mark Leonard* regarding the lack of affordable housing proposed therefore not conforming to his interpretation of cited bylaws. It is part of the public record.

3. There were questions made of the applicant which were framed as testimony in opposition:

a. *Perry Patterson* asked about the height of the building and if the heat pump would raise it further. Applicant stated that the heat pump would be recessed into the roof and that the height would not exceed 35 feet.

b. *Mark Leonard* asked about setbacks, noting that the plan has the building 18 inches from the property line when the setbacks should be five feet. He asked why this was being bypassed. Chairperson Hopkins stated that the applicant was not in front of the Planning Board seeking relief from setbacks and that if he should at a future date, **the decision of the Planning Board would be voided.**

f. *Planning Board member JoJo Lambert* asked about fire safety and alternate egress for the apartments proposed on the second and third floors. Project architect Chuck Sullivan addressed those concerns and said that although there was no fire escape or second stairway, that the project met state and federal codes.

g. *Planning Board member Bill Cleary* asked how the apartment units would be occupied. Would they be short- or long-term rentals? Applicant stated that initially they would be short-term rentals and that they would either continue to be rented at market-rate or sold at market-rate (“condo-ed out”).

### **Specific Findings / Zoning By-Law 7.2:**

1. In accordance with **By-Law 7.2**, the Planning Board reviewed the **purposes** of Section 7.2.4 as set out in Section 7.2.1.1 and determined that the Applicant’s project, as proposed and as conditioned herein and in MVC Decision DRI 663-M, meets the following:

- Allows 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;
- Provides 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\*\*;

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

*\*\* Planning Board Chairperson Ewell Hopkins* said the question that they 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. He stated his position is that the application does provide for a variety of housing needs and while the purpose gives examples of priorities, **it does not exclude or require a certain type** be included in the application.

*Planning Board members Erik Albert, Bill Cleary, Mark Crossland, and JoJo Lambert* said that the \$80,000 mitigation fee imposed by the Martha's Vineyard Commission was sufficient to address Affordable Housing needs in the Town of Oak Bluffs.

2. In accordance with **By-Law 7.2**, the Planning Board reviewed the **conditions** under **Section 7.2.5** and determined that the ground floor of the Applicant's project fronts Kennebec Ave. and is reserved for non-residential use. They also determined that circulation and access to and from dwelling units will be allowed on the ground floor level and that the design will be in harmony with the existing neighborhood.

3. In accordance with **By-Law 7.2**, under **Section 7.5.2**, the Planning Board confirmed that the Applicant had been in front of the appropriate Historic committees and that a demolition plan had been approved.

4. In accordance with **By-Law 7.2**, the Planning Board reviewed the **standards** under **Section 7.2.6** and determined that the proposed development meets the following standards. Furthermore, the special permit is granted on the assumption that the following standards are conditions to the decision:

- 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.
5. Under **Section 7.2.6.2 Drainage and Stormwater Management**, the Planning Board found that the Applicant’s project conforms to this criteria.
6. Under **Section 7.2.6.3 Internal Roadways, Walkways, Paths and Parking Areas**, the Planning Board determined that all internal roadways, walkways, paths and parking areas conform or are addressed in 5.1.5.3 as indicated in next point.
7. Under **Section 7.2.6.4 Parking**, the Planning Board determined that **Parking Mitigation under Section 5.1.5.3 of the Zoning By-Laws** is not applicable for this application, which states in part: *“when a proposed use in the B-1 District cannot meet the off street parking requirements, it may be waived by special permit granted by the Planning Board where the applicant makes a payment in lieu to the Oak Bluffs B-1 District Parking Mitigation Trust.”*
- \*\*\* SEE SEPARATE DECISION \*\*\***
8. Under **Section 7.2.6.5 Service Access, Including Deliveries and Trash Removal**, the Planning Board determined that the Applicant’s project as proposed met this standard.
9. Under **Section 7.2.6.6 Wastewater Management**, the Planning Board determined that the Applicant’s project as proposed met the standard of conforming to provisions of the State Sanitary Code, 310 CMR 15.00.

10. Under **Section 7.2.6.7 Utilities**, the Planning Board determined that the Applicant's project as proposed met this standard.

**Specific Findings / Oak Bluffs Zoning By-Law Site Plan Review Criteria (10.4)**

**Under Zoning By-Law 10.4, Section 10.4.3.3:** Where the Planning Board serves as the special permit granting authority, it shall consolidate its site plan review and special permit procedures.

**Specific Findings / Oak Bluffs Zoning By-Law Special Permit Criteria (10.3.2)**

Considering and weighing all of the six (6) criteria outlined in this Section, the Board found that Applicant's project as proposed to be **beneficial**:

- 1. Social, economic, or community needs which are served by the proposal.*
- 2. Traffic flow and safety, including parking and loading.*
- 3. Adequacy of utilities and other public services.*
- 4. Neighborhood character and social structures.*
- 5. Impacts on the natural environment.*
- 6. Potential fiscal impact, including impact on town services, tax base, and employment.*

The Board found, as a whole, that that the adverse effects of the proposed uses, as conditioned herein and as conditioned by MVC Decision DRI 695, do not outweigh the beneficial impacts on the Town or the Neighborhood.

**Decision of the Board:**

Member Mark Crossland made a motion to grant the special permit under **Section 7.2.4 Conversion and Expansion or Tear Down and Re-Build with Expansion of Existing Building to Apartment Units** and approve the site plan with the conditions listed below. Member Bill Cleary seconded. The Board, constituting a quorum and the required supermajority, consisting of Ewell Hopkins (Chair), Erik Albert, Bill Cleary, Mark Crossland, and JoJo Lambert voted 5-0 to grant the special permit and approve the site plan with no additional conditions:

1. The special permit is subject to the conditions imposed on the applicant in the Decision of the Martha's Vineyard Commission on **DRI #695**. The MVC decision is attached to this document and is to be recorded as part of this decision.

2. **Condition:** The special permit is granted on the assumption that the standards outlined in Bylaw 7.2 are met (*see page 5*).

**D. Record of Board Vote.**

The members of the Planning Board voted as follows to grant a Special Permit subject to the above-stated terms and conditions:

Signature	In Favor	Against	Abstain	Recuse
	X			
Ewell Hopkins				
	X			
Erik Albert				
	X			
Bill Cleary				
	X			
Mark Crossland				
	X			
JoJo Lambert				

Filed with the Town Clerk on: \_\_\_\_\_ 2020

\_\_\_\_\_  
 Colleen Morris, Town Clerk

\_\_\_\_\_  
 Assistant Town Clerk



*Copy of Special Permit Mailed to:*

GJ and BP Holdings LLC  
PO Box 1933, Vineyard Haven, MA 02568

All Noticed Parties (see abutter list)

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The Planning Board of the Town of Oak Bluffs hereby certifies that a Special Permit has been granted to **GP and BP Holdings LLC**, PO Box 1933, Vineyard Haven, MA 02568, affecting the rights of the owner with respect to land or buildings at 14 Kennebec Ave., Map 9, Parcel 29. Said Planning Board further certifies that the decision attached hereto is a true and correct copy of its decision granting said special permit, and that copies of said decision, and of all plans referred to in its decision, have been filed with the town clerk.

The Planning Board also calls to the attention of the Owner or Applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty days have elapsed after the decision has been filed in the office of the town clerk — *excepting that such timeframe may be suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020 (Covid-19)* — and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the Owner or Applicant.

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Ewell Hopkins, Chair

Dated: \_\_\_\_\_, 2020

**A copy of this decision was filed in the office of the Town Clerk, on June 12, 2020. Appeals, if any, should be made pursuant to Section 17, of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk, excepting that such timeframe may be suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020 (Covid-19).**

RE: Menotomy Building  
14 Kennebec Ave.  
Oak Bluffs, MA, Map 9 Parcel 29

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Date Appeal Period Expired

I hereby certify that no appeal has been filed within the twenty-day period following the date of the filing of this decision.

Attest: \_\_\_\_\_  
Colleen Morris, Town Clerk