

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter referred to as the “Agreement”) is entered into this 20th day of May, 2020, between and among DONALD B. CORNER, LAURENCE E. HARDOON, PATRICIA M. QUINN, and JENNY E. YOUNG (hereinafter referred to as “Plaintiffs”) and DONNA J. LEON and SUSAN P. PHILLIPS, Trustees of the Phillips Realty Trust (hereinafter “Private Defendants”) (collectively, the “Parties”).

WHEREAS, the Plaintiffs own 31 Circuit Avenue, Oak Bluffs, Massachusetts, (hereinafter referred to as the “ARCADE BUILDING”) a national historic property certified by the U.S. Department of the Interior, by virtue of a deed dated October 30, 1980, and recorded in the Dukes County Registry of Deeds in Book 377, Page 147; and,

WHEREAS, the Private Defendants own a commercial building at 30 Circuit Avenue, Oak Bluffs, Massachusetts, across the street from the Arcade Building, by virtue of a deed recording in the Land Court section of the Dukes County Registry of Deeds as Document No. 80504.; and,

WHEREAS, the Private Defendants wish to replace their building with a Proposed New Structure (the “Proposed New Structure”); and,

WHEREAS, the Private Defendants’ proposed new structure was approved by the Oak Bluffs Planning Board and the Martha’s Vineyard Commission; and,

WHEREAS, the Plaintiffs reasonably believe they would suffer cognizable economic harm from the height of the Proposed New Structure; and,

WHEREAS, the Plaintiffs reasonably believe the Proposed New Structure as approved would negatively impact the streetscape, public’s view, prominence, and cultural significance that the Plaintiffs and members of the public are entitled to preserve regarding their certified historic property; and,

WHEREAS, the Private Defendants do not believe the Proposed New Structure would cause the Plaintiffs economic harm nor negatively impact the streetscape, view, prominence, or cultural significance of the Plaintiffs’ property; and,

WHEREAS, the Plaintiffs appealed the decision of the Oak Bluffs Planning Board to the Land Court (*Corner et al v. T. Ewell Hopkins et al.*, Docket No. 18MISC000366); and,

WHEREAS, the Parties have engaged in good-faith negotiation to settle this matter to enable the Private Defendants to construct the Proposed New Structure with certain revisions agreed upon by the Parties (the “Revised New Structure”);

NOW THEREFORE, in consideration of the foregoing recitals, the covenants and agreements expressed herein, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

1. The agreed upon dimensions of the Defendants' building, both current and proposed, are as follows:
 - a. The sea level elevation to the top of the first-floor slab is 26.33 feet (per file:15PO3-Phillips Hardware – 2019-12-20 pdf and file 101397ws (10-29-19 pdf). This elevation of 26.33' is the base elevation from which all other heights in the project are dimensioned.
 - b. The roof pitch will be set at 7/12. The overall building height will not be greater than 60.45 feet above sea level and not greater than the highest ridge of the existing structure.
 - c. The maximum height of the existing structure is 60.50 feet above sea level, to the highest ridge as measured by George Sourati, engineer.
 - d. The maximum height of the new structure is 60.45 feet above sea level.
 - e. The vertical distance from the maximum upper ridge heights downward to the maximum height of the middle ridge between them will be no less than 4 feet - 7.50 inches.
 - f. The maximum height of the middle ridge of the new structure is therefore 55.825 feet above sea level.
 - g. The middle section of the roof will be entirely pitched downward from the top of the central dormer roofs toward the rear of the building. There will be no added height in the middle of the building for roof drainage above the maximum height indicated on the Circuit Avenue elevation drawing.
 - h. The Circuit Avenue elevation of the third floor at the center of the building will be treated as a roof form with projecting dormers consistent with the roof forms to the left and right of the central section. The roof slopes, dormer sizes and positions shall be as shown on the elevation and section pages of 15PO3-Phillips Hardware-2019-12-20 pdf. This design configuration reduces the apparent height and bulk of the building beyond the physical dimensions noted above.
2. The plans titled "Phillips Hardware 30 Circuit Avenue Oak Bluffs MA by Sullivan + Associates Architects dated December 20, 2019, and "Worksheet for Phillips JOB NO.: 101397, Drawing Number 101397(ws)" by Sourati Engineering Group dated October 25, 2019 ("Revised New Structure Plans"), are attached to this Agreement and incorporated herein for the purposes of illustrating the above dimensions and providing other exterior dimensions and features that may be relevant to the settlement in this matter.
3. The Parties agree to remand this matter back to the Oak Bluffs Planning Board for approval of the Revised New Structure Plans, which may include review by the Martha's Vineyard Commission.
4. The Parties shall execute a Joint Motion for Remand in the form attached hereto as Exhibit 1.
5. If the Oak Bluffs Planning Board or the Martha's Vineyard Commission impose any change(s) to the Circuit Avenue façade referenced in this Settlement Agreement and the

Revised New Structure Plans , the Private Defendants agree to obtain consent from Plaintiffs' to the proposed changes, which consent shall not be unreasonably withheld. Plaintiffs shall respond to said request within five business days, unless a longer response time is agreed upon. Failure to respond within the allotted time shall be deemed consent.

6. The Parties agree that the Land Court shall retain jurisdiction over this case and the case shall remain open until all permits are obtained and all appeal periods have expired. By executing this Agreement, the Plaintiffs do not waive any rights they have now or may have relative to changes to the Revised New Structure plans proposed by the Private Defendants or imposed by the Oak Bluffs Planning Board or the Martha's Vineyard Commission not in substantial conformity with the agreed upon Revised New Structure Plans. Any change in height shall be considered a substantial nonconformity.
7. It is understood and agreed that the Parties rely wholly on their own respective judgment, belief and knowledge of the facts relating to the making of this Agreement, which is made without reliance upon any statement, promise, inducement or consideration not recited herein. The terms of this Agreement have been fully negotiated and reviewed by each party and it is agreed and understood that no party shall be deemed to be "the drafter" of this document. Every party has relied on the advice of their respective counsel as to its terms and provisions. This Agreement contains the entire agreement between the Parties and all of the terms herein are contractual and not merely recitals.
8. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, regardless of the laws that might otherwise govern under applicable principles of law thereof. The forum for any dispute is the Massachusetts Land Court in Boston, Massachusetts.
9. If any provision of this Agreement or ramification thereof is held to be invalid or unenforceable, such defects shall not affect other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications shall be severable.
10. This Agreement may be executed in counterparts without each of the Parties required to execute a single Agreement. The executed counterparts shall be deemed to constitute a signed original document.
11. The Agreement shall inure to the benefit of the respective heirs, successors and assigns of the Parties.
12. All notices or other communications that any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand delivered, delivered by courier, sent by fax, electronic mail, or mailed by depositing in the United States Mail or overnight Mail Service, postage prepaid to the respective parties and their attorneys. Said notices or communications shall be sent to:

THE PLAINTIFFS at:

Laurence Hardoon
115 Fuller Street
Brookline, MA 02446
larryhardoon@gmail

with a copy to:

Meredith A. Fine, Esq.
46 Middle Street Suite 2
Gloucester, MA 01930
meredith@attorneymeredithfine.com

THE PRIVATE DEFENDANTS at:

13. Each person who executes this Agreement represents that he/she has full power and actual authority to enter into this Agreement and that it shall be binding in accordance with its terms.

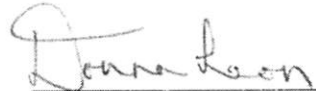
THE UNDERSIGNED HAVE READ THE FOREGOING AND FULLY UNDERSTAND IT.

PLAINTIFFS

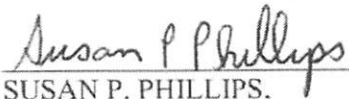
DONALD B. CORNER

LAURENCE E. HARDOON

DEFENDANTS



DONNA LEON,
Trustee of the Phillips Realty
Trust



SUSAN P. PHILLIPS,
Trustee of the Phillips Realty
Trust

PATRICIA M. QUINN

JENNY E. YOUNG