

P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557  
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# Decision of the Martha's Vineyard Commission - FINAL

## DRI 695 Menotomy Building

### 1. SUMMARY

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<u>Referring Board:</u>	Oak Bluffs Planning Board
<u>Subject:</u>	Development of Regional Impact #695 Menotomy Building
<u>Project:</u>	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 one-bedroom apartments above.
<u>Owner:</u>	GJ & BP Holdings, LLC
<u>Applicant:</u>	Brian Packish
<u>Applicant Address:</u>	P.O. Box 1933 Vineyard Haven, MA 02568
<u>Project Location:</u>	14 Kennebec Avenue, Oak Bluffs 02557; Map 9, Lot 29 (0.05 acres).
<u>Decision:</u>	The Martha's Vineyard Commission (the Commission) approved the application for the project as a modification to a Development of Regional Impact with conditions, at a vote of the Commission on April 9, 2020. This written decision was approved by a vote of the Commission on <i>April 23, 2020</i> .

The permit-granting authorities of the Town of Oak Bluffs 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

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The exhibits listed below including the referral, the application, the notice of public hearing, the plans of the project, the staff report 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. Many of the plans, staff notes, information and correspondence are available on the DRI 695 webpage of the MVC website:

#### 2.1 Referral

The project was referred to the Commission on December 19, 2019 by the Oak Bluffs Planning Board 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 3.1h) Development of Commercial - Parking for 10 or more vehicles; 3.2a) Mixed Use Building greater than 3,500 square feet; 3.2b) Mixed Use Building with four or more housing units; 3.3a) Commercial Space within B-1; 3.3b) Commercial Space subject to Special Permit; 3.4d) Restaurant within the B-1 with more than 50 seats; and 8.1a) Demolition of a Historic Structure listed on MACRIS. Checklist items 3.1h, 3.2a, and 3.4d are Concurrence Reviews; checklist items 3.2b, 3.3a, 3.3b, and 8.1a are triggers for Developments of Regional Impact that require a Mandatory Public Hearing.

## 2.2 Hearings

**Notice:** The public hearing notice was mailed to abutters within 300 feet of the property on February 4, 2020. Public notice of the hearing on the Application was published in the M.V. Times on February 6 and 13, 2020. The notice was also published in the Vineyard Gazette on February 7 and 14, 2020.

**Hearing:** The Commission held a duly noticed 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 February 20, 2020 and was closed at that time with the exception of the written record which was extended to February 27, 2020 at 4:00 p.m. and closed at that time.

## 2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan." Pages or sheets are 8.5" x 11" unless otherwise noted.

- P1. An Application package entitled "The Menotomy Building" 14 Kennebec Avenue, Oak Bluffs, MA 02557 consisting of ten (10) 24" x 36" pages prepared by Sullivan Associates Architects and Vineyard Land Surveying and Engineering, Inc. including, Site Plan, Scale 1/4" = 1'0"; A-01 First Floor Plan; A-02 Second Floor Plan; A-03 Third Floor Plan; A-04 Roof Plan; A-05 Basement Plan; A-06 Exterior Elevations (West and North); A-07 Exterior Elevations (East and South); S-01 Building Section, dated January 13, 2020, revised January 22, 2020, and revised again on February 3, 2020.
- P2. Existing Conditions package consisting of two (2) 24" x 36" pages prepared by Sullivan Associates Architects including: X-01 Existing Floor Plans; X-02 Existing Exterior Elevations dated October 18, 2019.
- P3. Project Narrative consisting of one (1) page submitted on January 13, 2020.
- P4. Menotomy Housing Mitigation Letter consisting of four (4) pages dated February 6, 2020.
- P5. Menotomy Building Structural Analysis, consisting of two (2) pages prepared by Reid Silva, Vineyard Land Surveying and Engineering, dated February 18, 2020.

## 2.4 Other Exhibits

- E1. Referral from the Oak Bluffs Planning Board, received December 19, 2019
- E2. Completed DRI Application signed January 6, 2020
- E3. MACRIS Record for 14 Kennebec Ave
- E4. Letter from Oak Bluffs Police Chief, Eric Blake, dated January 17, 2020
- E5. Letter from John Wojtkielo, dated January 31, 2020
- E6. Letter from Matt Viagio, dated February 1, 2020
- E7. Letter from Sharon Pingitore, dated February 1, 2020
- E8. Letter from Cara Lane, dated February 2, 2020
- E9. Letter from Eugene Donny Brice, dated February 2, 2020
- E10. Letter from Katherine Hough, dated February 2, 2020
- E11. Letter from Kenny Ponte, dated February 2, 2020
- E12. Letter from Sarah Omer, dated February 2, 2020
- E13. Letter from Tony Omer, dated February 2, 2020
- E14. Letter from Anthony Moreis, dated February 3, 2020
- E15. Letter from Capt. Jeffery Canha, dated February 3, 2020
- E16. Letter from Herbert Combra, dated February 3, 2020
- E17. Letter from Julie Ann McNary, dated February 3, 2020
- E18. Letter from Maggie Swift, dated February 3, 2020
- E19. Letter from Skip Finley, dated February 3, 2020
- E20. Letter from Stephen Amaral, dated February 3, 2020
- E21. Letter from Kristine Scheffer, dated February 6, 2020
- E22. Letter from John Aucoin, dated February 9, 2020
- E23. Letter from K. Mark Leonard, dated February 13, 2020

- E24. Letter from Michael Magaraci, dated February 13, 2020
- E25. Letter from Mary Ibsen, dated February 15, 2020
- E26. Letter from Frances McGuire, dated February 16, 2020
- E27. Letter from Susan Safford, dated February 16, 2020
- E28. Letter from Ariana Binney, dated from February 19, 2020
- E29. Letter from Caroline Cleaver, dated February 19, 2020
- E30. Letter from Ellen Gaskill, dated February 19, 2020
- E31. Letter from Grace Kortchmar, dated February 19, 2020
- E32. Letter from John Duryea, dated February 19, 2020
- E33. Letter from John Kerry, dated February 19, 2020
- E34. Letter from Larkin Stallings, dated February 19, 2020
- E35. Letter from Laurence Johnson, dated February 19, 2020
- E36. Letter from Max Dextraze, dated February 19, 2020
- E37. Letter from Melanie Malloy, dated February 19, 2020
- E38. Letter from Phoenix Rogers, dated February 19, 2020
- E39. Letter from Robert Stafford, dated February 19, 2020
- E40. Letter from Christian Thornton, dated February 20, 2020
- E41. Letter from Emily & Philip Hunsaker, dated February 20, 2020
- E42. Letter from Pam Melrose, Oak Bluffs Historic Commission, dated February 21, 2020
- E43. Letter from the Oak Bluffs Planning Board, dated February 24, 2020
- E44. Letter from Jenna Petersiel, dated February 24, 2020
- E45. Letter from Jessica & Andrew Green, dated February 24, 2020
- E46. Letter from Philip Reagan, Cottage City Historic District Commission, dated February 24, 2020
- E47. Letter from Dan Aykroyd, dated February 25, 2020
- E48. Letter from Holly Jenkinson Bario, dated February 25, 2020
- E49. Letter from Patrick Lyons, dated February 25, 2020
- E50. Letter from Robert & Gayle Mone, dated February 25, 2020
- E51. Letter from Susan Safford, dated February 25, 2020
- E52. Letter from Teresa Brewster, dated February 25, 2020
- E53. Letter from Peter Farrelly, dated February 26, 2020
- E54. Letter from Amy Billings, dated February 27, 2020
- E55. Letter from David Ginsberg, dated February 27, 2020
- E56. Letter from Genevieve Hart Abbot & Philip Cordella, dated February 27, 2020
- E57. Letter from Peter Bradford, dated February 27, 2020
- E58. Letter from Terri Hakala, dated February 27, 2020
- E59. Letter from Gina Stanley, dated February 27, 2020
- E60. Letter from Susie Nedley, dated February 27, 2020
- E61. Letter from Mark Wallace, dated February 27, 2020
- E62. Letter from Jessica Tartell, dated February 27, 2020
- E63. Minutes of the Commission's Pre-Public Hearing LUPC Review, February 3, 2020
- E64. Minutes of the Commission's Public Hearing, February 20, 2020
- E65. Minutes of the Post-Public Hearing LUPC Review, March 9, 2020
- E66. Minutes of the Commission Meeting of April 9, 2020 - Deliberation and Decision
- E67. Minutes of the Commission Meeting of April 23, 2020 - Written Decision

## 2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on February 20, 2020:

- Staff Report presentation by Christina Mankowski, Historic Structures Planner.
- Presentation of the project by Brian Packish.
- Oral testimony from Public Officials: Jim Bishop, Chair of the Oak Bluffs Affordable Housing Committee; Pam Melrose, Chair of the Oak Bluffs Historic Commission; Ewell Hopkins, Chair of the Oak Bluffs Planning Board.
- Oral testimony from the Public: Dr. Mark Leonard; Tony Omer; Ben DeForest.

## **3. Findings**

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### 3.1 Project Description

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.

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. 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.

The proposal is to demolish the existing structure and replace it with a larger building:

	Existing	Proposed
Restaurant sf	1,238	1,407 (not including basement)
Restaurant seats	55	52
Residential sf	799	2,807
Residential bedrooms	3	4

The building is proposed to be 32'10 ¼" in height with four one-bedroom units that will be used for market rate rentals. The architectural style is in concert with the existing building.

### 3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, 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.

### 3.3 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 of 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 essential and appropriate in view of the available alternatives (Section 15(a) of the Act.)**

**A2 The Commission finds that the proposed development would have a slightly positive 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 development will provide a moderate benefit in that based on review of the proposed plan by the Town of Oak Bluffs Wastewater Department, the building will be decreasing its flow by 35 gallons per day.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the application will have no effect.

With respect to Night Lighting and Noise, the Commission finds that the construction process will cause some noise and disruption within the surrounding area but should be similar to the existing levels once the project is completed.

**A3 The Commission finds that the proposed development would have an acceptable overall effect upon other persons and property (Section 15(c) of the Act).**

With respect to Traffic, Transportation and Impact on Abutters, the Commission finds it will have a neutral impact. The construction process will cause some traffic disruption within the surrounding area, but it will be temporary. While the proposed plan should not impact the level of vehicular traffic, it should be noted that the building is located in a high traffic area without sidewalks that could pose safety concerns, but is not necessarily a change from its current situation. The project would begin around October 15 and need to finish by May 15. No work would be permitted after Memorial Day, and exterior disruptions would not be allowed after that. The applicants would need to go before the Board of Selectmen to discuss interior work past Memorial Day. There is currently work happening in the area, and it has little to no effects on traffic. The proposed building would be a vast improvement over what exists. On an ongoing basis, it was determined that there would be no greater impact than what already exists.

With respect to Scenic Values, the Commission finds that the project would have a positive impact, as the proposed building plans replicate the surrounding architectural styles and character of the Town

With respect to Character and Identity, The Commission finds that the proposed building will provide benefit as it is generally consistent with Island architecture and will blend in with the local streetscape and further, that the proposed mixed-use project will significantly enhance the surrounding area and abutters in view of the new building and improved exterior. Finally, the tenants of the four rentals will provide an economic benefit to the surrounding businesses

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

A condition for the Applicant to pay \$80,000 payment in monetary mitigation was accepted by the Commission.

The Commission notes that the project does not include any units of affordable housing.

The proposal removes the existing work force housing from the site.

**A5 The Commission finds that the proposed development would have a significant benefit toward the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).**

The proposed project's FY 2020 Assessment is \$562,200 and the FY 2020 Property Tax Revenue was \$4,286. The proposed new building contains four new units that will provide an increase in assessed value, as well as an increase in annual property tax revenue to the Town.

The proposed restaurant will continue to generate meals tax revenue at 7%: 6.25% to the Commonwealth of Massachusetts and 0.75% to the Town of Oak Bluffs. The proposed project will continue to employ between six and 12 employees at the restaurant.

The proposed demolition and new construction will create a small number of temporary jobs in the construction and professional service sector industries.

The project improves the safety of the building by providing water sprinklers and brings the building up to code.

**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).**

The potential impacts to municipal services such as police and fire are likely to be minimal because the proposed project is located within a densely developed commercial/residential area. Unlike the existing structure, the proposed building will comply with building codes for health and fire safety. The first-floor restaurant will be ADA compliant. It is not anticipated that there will be an impact to schools because the four residential units are all one-bedroom units. The proposed project will be tied to Town water and sewer at the Applicant's expense.

**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 Application is consistent with the Oak Bluffs Master Plan and the property will be better positioned to provide year-round jobs to Island residents. The project is also consistent with the Oak Bluffs Downtown Streetscape Master Plan in that the project is located within the downtown area and will provide a building that is designed to blend in with the Town's streetscape.

**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 following policies of the Martha's Vineyard Commission *Regional Policy Plan*, adopted by a vote of the Martha's Vineyard Commission in June 1991.

I-4: "Give top priority to year-round job opportunities for permanent Island residents and increase the Island's self-sufficiency..."

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 and offers, 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 *Regional Policy Plan* adopted by the Commission in June 1991, and as enumerated previously in section A8 of this Decision.

**C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS GENERALLY CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.**

The proximity of the building to the street does not allow for room to install a sidewalk in the future. The owner stated that the building placement on the lot is still being determined. The front step sticks out of the existing façade, which is four feet from the property line. He stated that reconfiguring the building to be 18 inches shorter would avoid the need to go before the Oak Bluffs ZBA. The plans will likely be revised to remove nine inches from the front and back of the building to meet the setback. The Commission determined that this item is potentially a detriment but could be remedied by shrinking the building slightly. This decision would be made by the local permit granting authority

The property is not located in the flood zone but is within the 100-foot buffer zone. There would be mechanicals located in the basement, which could be a potential detriment. The mechanicals for the electric heat pumps would be enclosed on the roof.

**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 notes that the proposed development site is not located within any Districts of Critical Planning Concern.

#### **4. Decision**

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The Martha's Vineyard Commission deliberated about the application at a duly noticed Zoom remote meeting of the Commission held on Thursday, April 9, 2020 and made its decision at the same meeting. The meeting was held in compliance with direction from the Governor in light of the Corona Virus.

Fred Hancock moved, and it was duly seconded to approve the project as presented with the conditions and offers as approved by the MVC.

The following Commissioners, all of whom participated in all hearing and deliberation of this project, participated in the decision to approve the project with a two-year sunset provision on February 6, 2020.

- Voting in favor: Clarence "Trip" Barnes, Christina Brown, Josh Goldstein, Fred Hancock, Joan Malkin, Kathy Newman, Ben Robinson, Linda Sibley, Ernie Thomas, Christine Todd, Richard Toole, Jim Vercruysse.
- Voting against none.
- Recused: Doug Sederholm, Robert Doyle, James Joyce.

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 on April 9, 2020 and was approved by a vote of the Commission on *April 23, 2020*.

## 5. Conditions

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After reviewing the proposal for this Development of Regional Impact, the Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of the benefits and the resulting decision to approve the project is based on the proposal as modified by the conditions. The conditions form an integral and indispensable part of this decision.

- 1.1 Housing: The Applicant shall contribute \$80,000 to an Island housing entity. The entity will be identified by the Applicant and submitted to the Land Use Planning Committee for approval. Payment shall be made before the time of the issuance of the Certificate of Occupancy.
- 1.2 Energy: The Commission accepts the Applicant's offer to utilize all electric fixtures in the building, except for the grills and oven.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

## 6. Conclusion

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### 6.1 Permitting from the Town

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

The permit-granting authorities of the Town of Oak Bluffs 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 Commission and the above conditions.

### 6.2 Notice of Appellate Rights

Any part aggrieved by a determination of the Commission may appeal to the 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 Oak Bluffs Town Clerk.

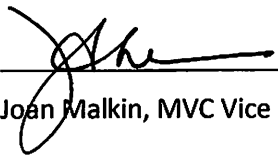
### 6.3 Length of Validity of Decision

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.



**7. Signature Block**

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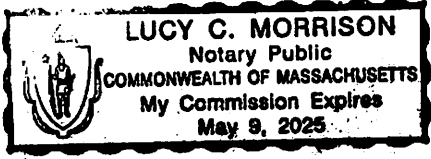
  
Joan Malkin, MVC Vice Chairman

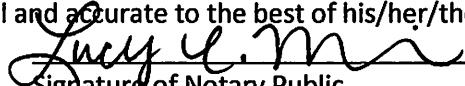
5/11/2020  
Date

**Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 11<sup>th</sup> day of May, 2020, before me,  
Lucy C. Morrison, the undersigned Notary Public, personally  
appeared Joan Malkin, proved to me through satisfactory evidence of identity, which  
was/were personal knowledge to be the person(s) whose name(s) was/were  
signed on the preceding or attached document in my presence, and who swore or affirmed to me that the  
contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Signature of Notary Public  
Lucy C. Morrison  
Printed Name of Notary  
My Commission Expires May 9, 2025

**Filing of Modification Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: \_\_\_\_\_  
Deed: Book \_\_\_\_\_, page \_\_\_\_\_  
Document Number: \_\_\_\_\_