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Decision of the Martha's Vineyard Commission DRI 696-M FFD Enterprises Modification

1. SUMMARY

Referring Board: Self-Referred for Modification

Subject: Development of Regional Impact #696-M Fine Fettle Dispensary Modifications

Project: Modification to allow walk-ins, extended hours, and other changes.

Owner: Cedar Box MV LLC

Applicant: FFD Enterprises, Ben Zachs (CEO); Ellen Kaplan (Agent)

Applicant Address: Fine Fettle Dispensary Martha's Vineyard
P.O. Box 1556
West Tisbury, MA 02575

Deed: Recorded Land - Book 1542, Page 187
Registered Land - Document Number: 88829; Cert: 14887

Previous Decision: Book 1543, Page 133

Project Location: 510 State Road, West Tisbury. Map 16, Lot 101 (approximately 0.405 acres).

Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on June 23, 2022.

Written Decision: This written decision was approved by a vote of the Commission on July 7, 2022.

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of the public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on February 22, 2022 by the Applicant 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, DRI Checklist Item 1.3D *Modification to a Previous Development of Regional Impact*. On April 28, 2022, the MVC voted that the modifications rise to the level requiring a public hearing and review as a Development of Regional Impact.

2.2 Hearings

Notice: Public notice of the hearing on the Application was published in the MV Times on May 26 and June 2, 2022; notice was also published in the Vineyard Gazette on May 27 and June 3, 2022. Abutters within 300 feet of the property were notified by mail on May 24, 2022.

Hearings: The Commission scheduled a public hearing on the Application pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on June 9, 2022 which was closed that same night with the exception of the written record which was left open until 5:00 pm on June 16, 2022 and closed at that time. The hearing was held entirely using remote conference technology as allowable under Chapter 20 of the Acts of 2021.

2.3 Exhibits

- E1. DRI 696 Patient Centric MV Recreational Dispensary MVC Decision, consisting of ten (10) pages, dated September 10, 2020.
- E2. Letter of LUPC Approval of DRI 696 Landscape and Lighting Plans, consisting of three (3) pages, dated June 22, 2021 and updated on July 21, 2021.
- E3. Letter from Ellen Kaplan, Applicant's Attorney, requesting a Modification Review, consisting of four (4) pages, dated February 22, 2022.
- E4. Emails between Ben Zachs, Fine Fettle CEO, and Alex Elvin, MVC DRI Coordinator, with clarifications and data, consisting of five (5) pages, dated March 15 to March 23, 2022.
- E5. Staff Report for DRI 618-M5 and DRI 696-M Fine Fettle Dispensary and Cultivation Modifications, consisting of three (3) pages, dated March 31, 2022.
- E6. Staff Presentation for DRI 618-M5 and DRI 696-M Fine Fettle Dispensary and Cultivation Modifications to the Land Use Planning Committee, consisting of sixteen (16) pages, dated March 4, 2022.

- E7. Emails between Ellen Kaplan, Alex Elvin, Ben Zachs, and Cory Ravelson, with answers to questions and data, consisting of eight (8) pages, dated April 11 to April 28, 2022.
- E8. Staff Presentation for DRI 618-M5 and DRI 696-M Fine Fettle Dispensary and Cultivation Modifications to the MVC, consisting of nineteen (19) pages, dated April 28, 2022.
- E9. Staff Presentation for DRI 696-M Fine Fettle Dispensary Modifications to the MVC, consisting of twelve (12) pages, dated June 9, 2022.
- E10. Letters from the following citizens: Abby Rabinovitz, abutter, on April 28 and May 12, 2022; Christine Napolitan, abutter, on May 31, 2022.
- E11. Minutes of the Commission's Land Use Planning Committee Modification Review, April 4, 2022.
- E12. Minutes of the Commission's Modification Review, April 28, 2022.
- E13. Minutes of the Commission's Public Hearing, June 9, 2022.
- E14. Minutes of the Commission's Land Use Planning Committee Post-Public Hearing Review, June 21, 2022.
- E15. Minutes of the Commission's Deliberation and Decision, June 23, 2022.
- E16. Minutes of the Commission's Written Decision, July 7, 2022.

2.4 Summary of Testimony

The following gave testimony during the public hearing on June 9, 2022:

- Staff presentation by Alex Elvin, DRI Coordinator.
- Presentation of the project by Ben Zachs, Fine Fettle CEO.
- Oral testimony from Public Officials speaking for their Boards: none.
- Oral testimony from the Public: none.

3. FINDINGS

3.1 Project History

The MVC approved DRI 696 with conditions in 2020, allowing recreational sales at an existing registered marijuana facility at 510 State Road in West Tisbury. The applicant at the time was Patient Centric of Martha's Vineyard, which later sold the facility, along with its state Cannabis Control Commission license, to Fine Fettle Dispensaries (FFD) Enterprises. The dispensary began operations in July 2021.

3.2 Project Description

The proposal is to modify conditions for DRI 696 as follows:

~~1.1 As offered by the Applicant, there shall be no walk-in sales. All sales are to be made by appointment only.~~

~~1.2 As offered by the Applicant, the hours of operation shall be limited to no more than 10AM to 6PM (7PM Daylight Savings Time) Sunday through Thursday; and 10AM to 7PM (8PM Daylight Savings Time) on Friday and Saturday.~~

CHANGE TO: From Labor Day through Memorial Day [end of May to beginning of Sept.], Monday through Saturday 9AM to 6PM; from the day after Memorial Day through the day before Labor Day, Monday through Saturday 9AM to 7PM and Sunday 12PM to 6PM.

~~1.3 As offered by the Applicant, there shall be no more than five appointments per fifteen-minute period, with an additional sixth appointment reserved for express orders.~~

~~2.1 As offered by the Applicant, for at least the first three months of operation (and possibly longer, as determined by the Town of West Tisbury), PCMV shall employ two parking attendants to allow for the safe and efficient flow of traffic. The Applicant shall, at all times, engage at least one parking attendant to monitor parking and traffic on the site and to ensure that no unauthorized use of the adjacent premises by patrons of the Applicant's business [occurs].~~

~~2.3 Subject to the West Tisbury zoning bylaws, the Applicant shall install a sign at the entrance to the premises saying, among other things, that sales are by appointment only, no walk-ins. All advertising and media must include this notice as well, provided that such media may note that sales may be made online for delivery or for express-line pickup (subject to an appointment for pickup).~~

3.3 Statutory Authority

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

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluation 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 testimony presented and reviewing all documents submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds that except where noted, the findings for DRI 696 (pursuant to Sections 14 and 15 of the Act) for DRI 696, are still valid. These are included below, with strikethroughs indicating portions that are no longer relevant.

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 and 15 OF THE ACT.

A1. The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

Marijuana is a legal, permitted use that must be carefully regulated and sited. The proposed site has already been approved for medical marijuana sales by the Town of West Tisbury. The existing building is already permitted for medical marijuana as an approved use in the zoning district. The site is not large, and this approval permits recreational marijuana to be offered for sale but restricts the operation in terms of ~~appointments per hour and~~ the opportunity to expand.

A2. The Commission finds that the proposed development would have a neutral impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Open Space, Natural Community and Habitat, the Commission finds a neutral impact given that the building and parking areas already exist on site. The Applicant proposes no further clearing and has submitted a Landscaping Plan.

With respect to Wastewater and Groundwater, the project utilizes an installed permitted septic tank and no additional facilities are proposed.

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

With respect to Traffic and Transportation, the project will add additional trips to the roadway. The project will result in a few trips delaying roadway operations, although only in peak seasons and at certain times. The Applicant has agreed to limit the hours of operation, but the development will still result in additional traffic and noise. The parking lot is limited in size ~~and additional trips may cause an issue if a higher number of appointments are permitted.~~

With respect to Night Lighting and Noise, the Commission notes that there will be security lighting on the premises. The Commission also notes that the Applicant has pledged Dark Sky compliance.

With respect to Scenic Values, Character, and Identity, the Commission notes that the physical landscape of the property will not change, and the building size will not increase, so scenic values are not to be affected. The existing vegetative screening will be preserved. The Commission notes that the building is already used for medical marijuana services and the proposed use is provided for in the zoning district by Special Permit. The Commission also notes that the building is surrounded by other non-residential uses including a grocery store and a bank. There are lower impact businesses in the area as well.

With respect to the Impact on Abutters, the Commission notes that the use has the potential to increase the intensity of use when compared to abutting uses. The Commission also notes that the

property is limited in size. As a mitigation, the Applicant has offered to limit customers, and the Commission has placed conditions on this approval to limit the detrimental impacts.

A4. The Commission finds that the project will have a neutral effect on the supply of needed low- and moderate-income housing for Island residents (Section 15(d) of the Act).

With respect to the Impact on Low- and Moderate-Income Housing, the building lease includes a 1-bedroom unit that could be used for employee housing. Once the current tenants move (possibly Fall 2020), the Applicant has offered to use it for year-round housing.

A5. The Commission finds that the proposed development would have a beneficial impact the provision of municipal services and the burden on taxpayers in making provision there for (Section 15(e) of the Act).

With respect to the Impact on Other Public Facilities, the Commission notes that traffic evaluation and mitigation might be required for higher numbers of customers appointments. All other facilities are already provided to the medical marijuana facility. The Applicant will make regular Community Impact Payments to the Town to mitigate additional expenses, if any, caused by the operation of this facility.

A6. The Commission finds that the proposed development would use efficiently and would not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years (Section 15 (f) of the Act).

A7. The Commission finds that the project as proposed generally would not interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan. (Section 15(g) of the Act).

With respect to Consistency with/and Ability to Achieve Town Objectives, the Commission finds that the site was evaluated and permitted for medical marijuana sales by the West Tisbury Zoning Board of Appeals in 2017. The project will return to the Zoning Board of Appeals for additional review.

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 project is heavily regulated and has received approval from State Agencies.

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

C. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The Commission finds that the property is not located in any DCPC.

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, including as modified by this decision, exceed its probable detriments in light of the considerations set forth in section 15 of the Act.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noted meeting of the Commission held on June 23, 2022 and made its decision at the same meeting.

The following Commissioners, all of whom participated in the hearing and deliberations, participated in the decision on June 23, 2022:

Voting to approve the project: Jeff Agnoli, Trip Barnes, Jay Grossman, Fred Hancock, Michael Kim, Joan Malkin, Greg Martino, Kathy Newman, Ben Robinson, Doug Sederholm, Brian Smith, Ernie Thomas, Jim Vercruysse.

Voting against: None.

Absent: Christine Todd.

Ineligible to participate: Christina Brown, Kate Putnam, Linda Sibley.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with conditions.

This Written Decision is consistent with the vote of the Commission on June 23, 2022, and was approved by a vote of the Commission on July 7, 2022.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the following restated and amended conditions apply in order to minimize the potential detriments and maximize the potential benefits:

1. As offered, the Applicant shall offer to pay for and install a sign (or multiple signs) in the Tea Lane Associates parking lot, stating "Tea Lane Associates Parking Only," with final design and placement as requested by Tea Lane Associates.
2. If requested by the MVC, the applicant shall submit annual transaction numbers (peak day and hour, and average daily transactions) for three years, no later than June 30 of each year.

Previous conditions (including as amended by this decision), which still apply to the project:

3. Business Operations

- 3.1 As offered by the Applicant, the hours of operation shall be from Labor Day through Memorial Day, Monday through Saturday 9AM to 6PM; from the day after Memorial Day through the day before Labor Day, Monday through Saturday 9AM to 7PM and Sunday 12PM to 6PM.
- 3.2 Any change in operating procedures (sales by appointment only, hours of operation, number of appointments per hour, engagement of a parking attendant, etc.) shall require a modification to this Decision. No request for modification shall be filed until at least six (6) months after commencement of operations, and this (6) month period shall include July and August.

4. Parking Management

- 4.1 As offered by the Applicant, the property owner shall install signage and other pedestrian cues throughout the parking lot to ensure that pedestrians are able to traverse the lot safely.
- 4.2 To enhance safe movement of vehicles entering State Road, a stop bar and accompanying stop sign shall be installed at an exit location that maximizes drivers' views to the left.
- 4.3 Striping shall be applied to delineate in and out lanes. This shall help guide existing drivers in keeping to the right and avoiding blocking incoming vehicles.

5. Housing

- 5.1 On expiration of the current least of the 1-bedroom unit on the premises, the Applicant shall make the unit available for lease to an employee of the business. If no employee is interested in leasing the unit, the unit shall otherwise be leased for year-round workforce housing.

6. Landscape and Lighting

- 6.1 Landscape and Lighting Plans shall be provided to the Land Use Planning Committee for approval before the issuance of a Certificate of Occupancy.
- 6.2 Trees on the abutting parcel to the north are to be maintained in perpetuity, and the addition of fencing to shield abutting properties.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with this decision 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.

6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Edgartown 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.

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6.4 Signature Block


Joan Malkin, Chair

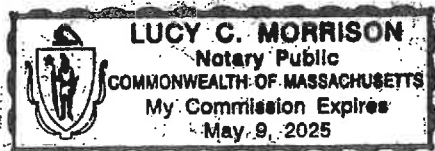
12 July 2022
Date

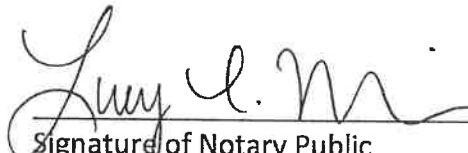
6.5 Notarization of Decision

Commonwealth of Massachusetts

County of Dukes County, Mass.

On this 12th day of July, 2022, before me, Lucy C. Morrison, the undersigned Notary Public, personally appeared Joan Malkin, proved to me through satisfactory evidence of identity, which was personal knowledge to be the person whose name was signed on the preceding or attached document in my presence, and acknowledged to me that she signed it voluntarily for its stated purpose as a free act and deed, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.




Signature of Notary Public

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

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 27, 2022

Deed: Book 11632, Page 348

Document Number: 00004858