

Zoning Board of Appeals
Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Gail Barmakian

Jane Lofgren

George Warren

Associate Members:

Joseph Re

Peter Palches

NOTICE OF DECISION

April 9th, 2009

Re: Application of the Island Affordable Housing Fund, 96 Dukes County Avenue,
Oak Bluffs, Ma. Map 11, Lot 193

Applicant is seeking a **Comprehensive Permit** to renovate an existing building to include one (1) residential dwelling unit, one (1) meeting room, and one (1) office, and to build two (2) new buildings to include one (1) commercial unit, two (2) live/work units and seven (7) residential dwelling units.

A. Background

1. By application received June 25, 2008 from the Town Clerk's office, a hearing was requested from the applicant on their request before the Board of Appeals.

B. Summary of Meetings

2. On July 17th Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal; Gail Barmakian; Jane Lofgren; Joe Re; and Peter Palches were present. Philippe Jordi from the Island Housing Trust (IHT) spoke of the history of the existing structure and its use by the African-American community as the Bradley Church. He showed a plan for three buildings to be on the property that are designed to have mixed residential/commercial use. The proposal is to relocate the existing "Denniston" building and renovate it to have a multi purpose room, office space and a living unit. There will be two other new buildings; each having 5 units with 2 -3 of them intended to be used as artistic "live/work" units.

Philippe stated the proposed plan is similar to the community concept of "smart growth" centers – dense use of space close to the town that emphasizes a pedestrian friendly lifestyle. He said IHT will maintain the ground lease and oversee the condominium association's by-laws for the units. The proposal has 11 on site parking spaces for the residents and plans for 6 street parking spaces as well.

The Bradley Square project will cost 5 million and the affordable housing group will raise 1.7 to offset the total cost.

Philippe said that five of the residential units and the "live/work" units will be sold at affordable rates to island residents whose incomes fall between the 80% to 140% range for

median household income. 4 of the 9 units would go to Oak Bluffs residents. The last two remaining units would be sold at market rate.

3. Philippe discussed the multi purpose room. He said capacity was 74 people and that there would be no more than 3 activities scheduled per week that consists of more than 30 people. Architect Matt Cramer from Hutker Architects showed the Board a site plan of the whole property. He addressed the “streetscape look” of the property and how the parking, both on site and off, would look as well as the planned open space to be used to provide some relief from the overall scale of the buildings.

Matt said the Denniston building will have a new foundation with a full basement used for storage only. He showed a floor plan that detailed the square footage flexibility of the live/work units within one of the new buildings.

Kristen Reimann, the project’s landscape architect, explained that there was a one way driveway providing access to eleven parking spaces. There are two locations on the property for rubbish and recycling bins. She showed the “green” spaces in between the buildings. There was a tree survey done that identified the condition of the trees on the property. 27 trees were classified as poor, fair, good, very good and excellent. None of the trees are classified as excellent or very good – 11 were in poor condition having been damaged, 11 were in fair condition as having structural defects. 5 trees were in a good healthy condition. Kristen said that she had met with the tree warden and he has given permission to take down the trees that are under his jurisdiction that are considered in poor condition. She talked about the new tree plantings in conjunction with the trees staying on the property.

4. The Board asked questions about handicap accessibility and preference for homeowners qualifying as “artists”. There was discussion on the restrictions to be imposed on the use of the multi purpose room and how commercial use could occur in the residential part of the lot. Philippe stated that 3 of the units will qualify for the town’s affordable housing inventory. There was discussion about the number of subsidized homes already available in town. The other units being sold at higher rates will also have deed restrictions but they don’t get added to the 10% list the town maintains with the state for affordable housing.

5. In the public discussion neighbors expressed concerns related to parking and traffic, the lottery process for the affordable units and wastewater tie-ins. Other neighbors approved of the idea of having space for artists to live and work in a community known for supporting the arts. Selectmen Kerry Scott raised a concern that a step in the review process had been skipped. She said that when the applicant came to the Board and received the application to go to the state, the DHCD did not receive any written comments from the Board prior to issuing their letter of eligibility. Gail said she thought that it wasn’t a requirement and only an opportunity for the Selectmen to express any concerns about health or safety with the proposed development.

Realizing that there was more testimony to be heard on the parking and traffic study done by the Martha’s Vineyard Commission (MVC), the sewer tie-in, sidewalk construction and the 10% threshold for town subsidized community housing, the applicant requested a

continuance which the Board, by consensus, agreed to. The hearing was continued to the next meeting of the ZBA scheduled for July 31st at 6:45 pm.

6. On July 31st, Chairman Kris Chvatal continued the public hearing.

Kris explained the agenda for the hearing and included a provision that the Board would once again solicit public comment as well as focus on the key issues that had been raised from the July 17th meeting. Zoning Administrator Adam Wilson reported that the sidewalk construction for Masonic Avenue would cost the town 20 thousand dollars. Adam also reported that as of July 3rd, 2008, the state lists that Oak Bluffs subsidized housing inventory is 8.4% of the total number of year round housing units in town. Adam also did follow up research on the restrictions imposed by the MVC on the ownership and use of the multi purpose room in the Denniston building. The MVC restricted its use to only 3 events per week of 30 or more people; that those types of attended events that are +30 have a shuttle service to a satellite parking area and the events are only be for religious, non profit or educational use only.

Philippe modified the original proposal so that the live/work units will preferably go to artist applicants but will not be a requirement. He said the 2nd floor unit in the Denniston Building will be renovated by Habitat for Humanity. Philippe confirmed there is a plan for the lot to have one address on Dukes County Avenue in order to satisfy wastewater conditions for all three buildings to be tied in to the sewer line.

The Board and applicant had a discussion on the perception that the artist live/work spaces are what the neighborhood wants for the housing development. The Board and applicant talked about the creation of the live/work units within the 40B proposal and the many art galleries that already existed in the neighborhood along Dukes County Avenue. Phillippe stated that if there were too many of these units creating an unbalanced effect of commercial versus residential, they would drop the proposed live/work unit in the Bradley II building and make it residential only. He stated that there can be a reduction of one live/work space. The unit that was in Bradley II and in the part of the lot zoned residentially could just be residential. The price of the units in relation to affordability was discussed. The applicant stated that the live/work units will be marketable because of their unique use.

7. In the public discussion there were concerns given by direct abutters to the density of housing proposed on the one lot and also how parking will occur. Neighbors in support talked of how the renovation of the Denniston house will enhance the look of the neighborhood and the new buildings will revitalize the community. Letters to the Board were read in support and also to express concern about the long term monitoring of the commercial units and how traffic will be affected along Masonic and Dukes County Avenues.

8. The Chairman asked if anyone else wished to speak on the proposed housing plan to raise their hands. No one raised their hands.

A motion was made to close the public hearing.

The Board voted 3 -2 to close the public hearing.

The Board reconvened with the applicants and questions were asked on the following subjects:

1. Is there enough room for emergency vehicle access? Can the fire chief meet with the Board for an analysis of what's proposed;
2. Can the Board meet with a representative from the traffic study group? Can the Board get an accurate report on the # of available parking spaces and where exactly they are in the neighborhood?
3. Are there any plans by police and highway to put up signs for available parking?

Questions were asked about eliminating one of the new buildings. The applicant maintained that because the property was sold as a package for 905 thousand dollars, they have to build the number of units to make it cost justifiable.

Kris reminded everyone that the state mandates developments of this type have to be considered because of the 10% rule.

Subjects needing further review were discussed. Adam said he would contact officials the Board wanted to meet with and then work to arrange a time for another public meeting that would be posted on the town's bulletin board at least 48 hours in advance.

The Board's scheduled meeting concluded at 10:00 pm.

9. On August 19th at 7:30 pm, Chairman Kris Chvatal opened a duly posted public meeting. Charlie Grevo from C3 Consulting Group in Wellesley testified about his company's traffic and parking study done for the Martha's Vineyard Commission (MVC). The Board asked Mr. Grevo about his own experience, parking needs, the impact of the event hall, and the shuttle bus provision. Mr. Grevo also fielded questions from the board regarding the basis on which the parking data was calculated, sidewalk conditions, the number of parking spaces already available locally, conditions imposed by the MVC, and pedestrian traffic and safety. Sgt. George Fisher from the Police Department spoke next. There was a discussion regarding road width, access by emergency vehicles and the roles of the fire and ambulance department. Joe DeBettencourt, the Town's Tree Warden, also contributed. A discussion of state code and possible obstructions then occurred. Both Mr. Grevo and Sgt. Fisher were asked questions about traffic accidents. Sgt. Fisher and the Board discussed parking, lighting, and the conditions prevalent in the neighborhood during town events, shuttle bus routes, and traffic safety. The Board discussed existing conditions in the neighborhood, the marketing of the project's residential units and parking signs.

10. A letter of approval for from the Wastewater Commission was read and the zoning administrator reported on the convergence of the property into one lot. The Board then discussed commercial uses in 40B projects and the definition of an exempted use. Letters from the public and local organizations were read, and the chair addressed a concern with a board member's letter in a local newspaper. The tree warden, the applicants and the Board discussed concerns over certain trees, and

the applicants and tree warden agreed to report back to the Board on possible solutions.

The applicant addressed questions regarding project cost, market value of the lot, funding and financing, the effect of reducing the number of units, accounting and planning, tax credits and the effect of units not selling. Sale of the multi purpose room, state and federal funding, handicap access, density standards, live/work units and commercial use restrictions were included.

It was agreed by request from the applicants and consensus from the Board to continue the meeting until August 21st at 7:30 pm.

11. On August 21st the Board reconvened from Tuesday's meeting. Kris read into the record receipt of 13 letters and 3 e-mails from various Oak Bluffs residents. The Board and applicant discussed the roles of organizations involved in the project, the process by which modifications were made, and the possibility of the cultural center not being sold. The Board discussed the term "non-profit educational corporation" and if it applies to the NAACP, as well as density standards. The Board and the applicant then discussed artists' preference, MVC conditions and enforcement, possible restrictions to the live/work units, qualifications for affordable housing, and preference for Oak Bluffs residents.

The zoning administrator reported his contact with the fire chief, and the applicant disclosed a compromise with the chief regarding emergency vehicle access. The Board then discussed the need for the chief to appear at the next meeting to answer questions.

The Board and the applicant then discussed the relocation of the Denniston building, the possibility of a condition for barring a commercial kitchen from the basement, and preservation of the building to standards and codes. The discussion then turned to residential and commercial parking needs, the impact of events held in the cultural center, the implications of the C3 traffic study, its recommendation of a "resident only" parking plan, and the availability of parking in the neighborhood.

A request was made by a resident to re-open the public hearing to talk about parking.

Kerry Scott spoke about the Board of Selectman not holding a public hearing.

It was agreed by request from the applicant and consensus from the Board to continue the meeting until 6:30 on August 28th."

12. When the Board continued its meeting on August 28th, The chair informed the board that, in response to a request to town counsel that the public hearing be re-opened, it was advised that the Board stop the process immediately, re-advertise and notify, and re-open the hearing at the earliest possible time. The applicant was asked to agree to an extension of thirty days, which they did. The Board discussed both the impact of closing the meeting immediately and the length of the extension.

A motion was made to extend the decision on Bradley Square by thirty days and to re-open the public hearing at a meeting at 7 p.m. on September 18th.

The Board voted 3 – 2 to extend the decision by thirty days.

13. On September 18th Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal; Gail Barmakian; Jane Lofgren; Joe Re; and Peter Palches were present.

Kris told Board Members he had asked Town Counsel to advise the Board on a process for approving a 40B project with conditions. The response from Counsel is as follows:

- Any board member may add a condition to a list at any time;
- It will be the Chairman's intent to keep the hearing open so that the applicant can relate whether or not it will accept a specific condition.

Kris asked that this be the framework should the Board get to the point where they may want to consider an approval and if Board Members had any questions to contact him. Kris then read a reminder to the audience that all forms of communication to the zoning board should flow through the zoning administrator and no attempt is made to communicate with individual board members at their residences. Kris then read a synopsis of what had occurred at the last three meetings. After reading the synopsis Kris asked if the applicant, Tree Warden Joe deBettencourt, Traffic Advisor Charlie Greco and OBPD Sgt George Fisher wished to add their own statements to the summery he had just given. There were no additional statements made. Kris then acknowledged receipt of 8 letters received from the public since the 8 – 28 meeting. Kris opened the floor for public comment.

14. Richard Leonard from the Martha's Vineyard Savings Bank represented the applicant and read a statement asking for a continuance of 30 days so that a committee could be formed between the housing fund group and a concerned citizen's committee so as to come to an agreement that would favor approval of the proposed three building project. He spoke to the attended crowd of a mutual desire to bring the project to fruition.

The Board discussed the proposal for a continuance and the request to end the meeting until that time. Kris said there's an opportunity for the public to give input and perhaps suggest conditions for approval. By consensus the Board agreed to allow the public to comment and then take up the continuance request.

The Board then heard from 38 town residents speaking of concerns about the project's size and related issues and of the fact that there would be mediation between the applicant and the community group to condition the project making it favorable to all.

15. The Board then discussed how long an extension is needed for another meeting and then how long beyond that do they have to make a decision. By consensus the Board consented to the applicant's request to continue the meeting process another 30 days. A motion was made for a continuance of the public hearing to October 23rd @ 6 pm at the same location.

The Board voted 5 – 0 to continue the public hearing.

By consensus the Board agreed that a decision date would be postponed until November 20th.

A motion was made to adjourn until October 23rd @ 6pm.

The Board voted 5 – 0 to end the meeting at 9:30 pm.

16. When the Board reconvened its hearing on October 23rd, Kris told the Board he had received a letter from Philippe Jordi of the Island Housing Trust group requesting an extension to the Board's next regularly scheduled meeting in order to allow necessary time for the applicant to revise the project proposal. Kris stated the 1st slot available to meet with the applicant would be 6:40 pm on November 20th. The applicants said they had no problem meeting at that time.

a motion was made to continue the hearing to November 20th at 6:40 pm.

The Board voted 3 – 1 to continue the hearing to November 20th.

The applicants signed off on the continuance document. The meeting ended at 6:30 pm.

17. When the Board reconvened the public hearing on November 20th, Adam stated that the applicant was coming to the Board with a modified proposal to the plan to build affordable housing units at 96 Dukes County Avenue. He told everyone that because the project has been approved as a Development of Regional Impact with the MV Commission, it had to go back to that board for further review before any other consideration for permitting could be granted. Kris stated the Board would hear the modified proposal, take public comment and ask questions but would then adjourn to a later date while the housing group would take up the matter once again with the Commission.

18. Philippe Jordi from the Island Housing Trust 1st showed on a site plan that the property will now have 20 parking spaces instead of 11 – the driveway that was to be in the back of the lot is no more. He said there will be 6 trees to remain on the property but the rest will be taken away and new trees and shrubs will be planted. The current Denniston house is to remain where it is and the other two proposed buildings will be reduced in height from 32 feet down to 28. Philippe said the floor space for the proposed new buildings will be reduced as well. The height and massing of the new buildings have gone down; the net square footage has gone from 12,400 to 9,300. The living units go down from 9 to 8 and all will have income purchase restrictions. The live/work units have been reduced from 3 to 2 and they along with one 846 sq. foot commercial unit will be sold at market rate. Philippe also reported that there will no longer be an ownership preference for these ground floor units.

The Denniston building will still have an event space and room for an office on the 1st floor. The affordable housing people will be restricting in the ownership deed a maximum of 30 people being able to use the hall space twice a week.

Floor plans were shown. The building closest to Wing Road will be all residential.

Questions were asked about the change in the layout of the old vs. new site plan. Sidewalks were discussed. Philippe said the building sitting in the B1 portion of the lot is shorter in height but wider than what was 1st proposed. The applicant said the 2 remaining live/work units are in B1 only. The original 2 bedroom market rate units are gone now and all the units will be income restricted.

Kris acknowledged 3 letters received were received from abutters prior to tonight's meeting. He then opened the floor for public comment.

Eleven people spoke about the changes being made. Some felt the project was still too big but most gave thanks to everyone who helped negotiate a solution for neighbors and applicants regarding the project.

19. Kris read the Oak Bluffs Concerned Citizens Committee statement. The applicant pointed out that the statement was made before the negotiations began. They stated that every position the citizen's committee took issue with on the proposed development was addressed by the affordable housing group and compromise was reached on every one. Kris asked for another meeting to let the Board put together a conditions list for the MVC to consider. Gail said she needs more information in order to come up with her conditions. Kris said there has to be ideas. He said he is looking for precise direction.

A motion was made to continue the hearing to December 2nd at 6pm to give the applicant enough time to meet with the MV Commission on the modification of their development of regional impact.

The Board voted 5 – 0 to continue the hearing to Tuesday, December 2nd @ 6 pm.

20. When the board reconvened on December 2nd, Kris stated he would like the Board to send conditions to the commission to consider. Gail brought up the subject of the application as a 40B and what constitutes "affordable." She calculated that if there are 10 units then 25%, or 3, not 2, must be 80 % AMI. The applicant concurred.

Kris asked which of the units would be for OB affordable in relation to preservation funding. The applicants said the two 80% units as well as the other units in Bradley I would be given Oak Bluffs preference.

Gail made a motion have the "live/work" units be owner occupied by deed restriction and be limited to only to having 114 square feet of commercial work space. Peter seconded.

The Board voted 5 – 0 to approve the condition.

Gail asked that the Bradley II building be taken out of the proposal. She explained that Bradley II makes the project too dense for such a small lot in a thickly settled neighborhood.

Gail made a motion to eliminate the Bradley II building and keep both the Bradley I and Denniston building and recalculate the affordable rate %'s to compensate for the eliminated units.

There was no second.

21. Kris read off a list of conditions regarding the changes to the proposed project he would want the Board to send to the MVC as conditions they highly endorse. They included the following:

1. The Denniston building remains in its current location;
2. The use of the Denniston meeting room shall be limited to 2 evening meetings per week of no more than 30 people per meeting; and that no meetings can be scheduled during Art Strolls or other major town events that have an impact on neighborhood parking. The Board could revisit the use and further restrictions at a later date;

3. The building referred to as Bradley #1 shall be limited to two floors, including one market commercial space, two market rate live/work units and three permanently affordable units;
 4. The building referred to as Bradley #2 shall be limited to two floors, consisting of two permanently affordable units on the 1st floor and two permanently affordable units on the 2nd;
 5. The height of the buildings referred to as Bradley #1 & 2 shall be no higher than 28 feet above mean grade;
 6. The master ground lease shall include permanent affordability restrictions for all eight residential units;
 7. That local preference shall be given to town residents the four affordable units constructed with CPC funds;
 8. That no less than 20 on-site and 4 on-street parking spaces shall be constructed;
 9. That the affordable housing selection housing process be administrated by the Dukes County Regional Housing Authority with the greatest degree of transparency;
 10. The applicant will comply with MVC condition 1.4 in that the condominium association's master deed and declaration of trust shall govern the use and maintenance of the property and the condominium units;
 11. The applicant will comply with MVC condition 3.8 that all fertilizers shall be slow-release, water insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping;
 12. The applicant will comply with MVC condition 4.2 that they will preserve, restore, or historically replicate the treatments within the historic Denniston building's sanctuary...and permanently protect the space through the condominium association's master deed and declaration of trust;
 13. The applicant will comply with MVC condition 4.3 that they will preserve the historic artifacts in the Denniston building in conjunction with the Martha's Vineyard Museum, and build an artifact display case within the Denniston center with storage space in the basement.
- A motion was made to adopt the 13 conditions read by Kris and to have them presented to the MVC.

In the discussion it was agreed to amend condition #2 that the Board could revise it the use and further restrictions at a later date.

The Board voted 5 – 0 to adopt the 13 conditions.

22. The subject of the proposed on site parking was brought up next. Board Members said it was important to delineate the spaces for residents and those for business.

A motion was made that appropriate signage be used for parking for residential and commercial usage with a review of # of spaces.

The Board voted 5 – 0 to approve the condition.

23. The Board next discussed outdoor activities on the entire property. Members of the Board and the public went back and forth on what residents could be allowed to have and what the nonresidential owners could do as far as outdoor functions. Discussion continued on what can and cannot be allowed in terms of use of outdoor functions and the neighbors' protection from overuse of the property.

A motion was made that neither the commercial units nor the nonresidential owners of the Denniston Building shall cause an outside gathering or activity.

The Board voted 3 – 2 to grant the condition.

24. Adam was asked to give the conditions from tonight's meeting to the applicants for the selectmen's meeting they have next Tuesday. Since the applicants needed to meet once again with the Commission, it was agreed to continue the public hearing. The applicants agreed.

A motion was made to continue the meeting generally until there is a conclusion of the MVC hearings and an agreed upon date has been set with proper notification.

The Board voted 4 – 0 – 1 to grant the continuance.

25. On April 9th Chairman Kris Chvatal reconvened the duly posted public hearing. The applicant came to the Board and showed modified plans for the community housing project. Philippe Jordi said the review has gone on for 18 months with 8 of those months used to design the project. The Martha's Vineyard Commission reviewed it for the next 4 months. In July of 2008 it came to the ZBA. There was a time out so that the Oak Bluffs Concerned Citizens Committee could work conditions into the agreement. They met 7 times over 5 weeks. They went back to the Commission with a modified plan.

26. The applicants showed that on site parking went up from 11 – 20 spaces. Open green space has been greatly reduced but trees retained. The height of the two new buildings has gone from the originally proposed 32 feet down to 28 feet. All commercial space is now located in the B1 area of the property. The Denniston building originally proposed to be moved to the east end of the lot will now stay in its current location. Events in the building are limited to a maximum of 30 people twice a week. The number of units went down from the original proposal but the number of bedrooms went up. Each residential unit will sold to qualified low to moderate income applicants. Oak Bluffs residents will get preference for 4 of the units.

Oak Bluffs residents can also qualify for the other units as well.

Philippe reported this project will generate 100 construction jobs as well as tax revenue for the town. The modified plan approved by the Commission includes all the conditions approved by the Board at its December 2nd meeting and added that tree #52 be retained and that only 18 parking spaces be required on site.

27. Philippe reported that because several trees are to be retained with 15 foot no digging zones around them, the Bradley I has been shifted 7 feet east to comply with the MVC condition. The Denniston building also will be put on a new foundation that will be 1 foot 8 inches east from the present location. Philippe showed on the site plan the two parking spaces the Commission thought should be eliminated. He said not having them would create a buffer area for residents across the street on Masonic Avenue.

28. Kris read off receipt of 8 letters brought to the Board.

The floor was opened for public comment. 8 town residents spoke in favor of the modified project. Other residents still expressed concerns about traffic safety and the parking that had been created for the project. An issue was raised as to whether or not the applicants had proper documentation to allow sewer tie in.

Philippe said the lots were merged back in August. He showed the Board a recorded deed acknowledging that the property is one lot and recorded as 96 Dukes County Avenue satisfying wastewater's condition for tie in.

Selectman Kerry Scott said it's too much of a good thing. She said it was hoped to be more affordable. She said the project has a lot of support but is too much on the lot. There was discussion on how construction will occur around trees the tree warden wants protected. Other town residents stated that even though community sentiment is not all in favor it's time to vote. It was also brought up that funding for the project was reconsidered by town voters and re-voted in favor of supporting the construction of the affordable units.

29. After hearing from the public the board discussed the modified and conditioned project. Gail thought the preservation of the Denniston building and the low income affordable housing component were the most important aspects of the proposal. She stated it would be a better project if the Bradley II building were removed. Joe stated the long process of review was ragged at times. The applicants responded that they took the time to hear the concerns of neighbors and have scaled back many components of the design and use because of it. The Board discussed the condition that the Denniston building not be moved. It was agreed that the condition was intended to prevent a complete relocation of the structure. The current plan to put it on a new foundation that is only 1 ½ feet different than the current location was acceptable.

A motion was made to remove the condition that the Denniston Building not be moved.

The Board voted 5 – 0 to remove the condition.

30. The Board took up the issue of parking. Kris said a board condition was to have 20 on site and 4 on street parking spaces be included in the plan. He asked for discussion about the Commission's recommendation to have only 18 on site. Gail asked what relief the applicant needs from zoning regarding parking. She said that according to the by-laws the density and use of the property would require 28 spaces. She said in the bylaws for "flexible development" there is language for parking requirement for multi family buildings. There was discussion about each unit needing one or two spaces. Kris commented on the applicant's concession to the OBCCC to have 20 on site parking spaces instead of 11. He stated that it was a major concern in prior meetings that too many people utilizing Bradley Square would have to find parking in other areas of the neighborhood. There was discussion on the burden of providing parking both on site and off both daily and during special events. Kris asked Board members if the condition that the project has 20 onsite and 4 on street parking spaces should be upheld.

A motion was made to eliminate the Board's condition to have 4 on street parking spaces but that there will be no less than 20 on site parking spaces.

The Board voted 5 – 0 to approve the modification of the parking condition.

31. Kris pointed out 3.5 of the Commission's conditions involving trees on the property be incorporated into the ZBA decision. Board discussed incorporating all the conditions in the MVC decision into the ZBA decision. Kris asked about the fencing around the perimeter of the property. Philippe said it will be six feet either wood or vegetation. Kris said the MVC condition says it's a fence with vegetation.

32. Gail said she wants to seek clarification on the Commission's traffic study. There was discussion of extending the time to be able to further review the Commission's decision. Gail made a motion to continue the hearing for another 10 days to answer questions still pending. Joe seconded.

The Board voted 2 -3 to close the hearing for another 10 days.

33. The Board discussed the Commission's condition of the applicant recommending to the town an implementation of a sidewalk plan which includes 4 on street parking spaces along Masonic Avenue. Gail thought it wasn't necessary. There was discussion on how the more restrictive conditions imposed by either the Commission or the Board cannot be reduced. A motion was made to approve the project with the Board approved conditions and Commission conditions except 2.2.

In the discussion Gail asked if commercial use restriction should include restaurants as well as fast food restaurants. Provisions for commercial use in the Commission's decision were discussed.

The Board voted 3 – 0 – 2 to approve the motion.

C. Decision

34. A majority (3 votes) of the 5 member Zoning Appeals Board is required to approve the Application. Accordingly, the motion to approve carried and the application is granted.

D. Conditions

35. The applicant will comply with all conditions except 2.2 set forth in the DRI 612-M – Bradley Square Modification decision approved by the Martha's Vineyard Commission March 5th, 2009.

The applicant will also comply with all conditions set forth by the Zoning Board in the record of its proceedings. They are as follows:

A. the "live/work" units be owner occupied by deed restriction and be limited to only to having 114 square feet of commercial work space;

B. The use of the Denniston meeting room shall be limited to 2 evening meetings per week of no more than 30 people per meeting; and that no meetings can be scheduled during Art Strolls or other major town events that have an impact on neighborhood parking. In addition,

neither the commercial units nor the nonresidential owners of the Denniston Building shall cause an outside gathering or activity.

C. The building referred to as Bradley #1 shall be limited to two floors, including one market commercial space, two market rate live/work units and three permanently affordable units;

D. The building referred to as Bradley #2 shall be limited to two floors, consisting of two permanently affordable units on the 1st floor and two permanently affordable units on the 2nd;

E. The height of the buildings referred to as Bradley #1 & 2 shall be no higher than 28 feet above mean grade;

F. The master ground lease shall include permanent affordability restrictions for all eight residential units;

G. That local preference shall be given to town residents the four affordable units constructed with Community Preservation Act funds;

H. That no less than 20 on-site parking spaces will be constructed;

I. That the affordable housing selection process be administrated by the Dukes County Regional Housing Authority with the greatest degree of transparency;

J. The applicant will comply with MVC condition that the condominium association's master deed and declaration of trust shall govern the use and maintenance of the property and the condominium units;

K. The applicant will comply with MVC condition that all fertilizers shall be slow-release, water insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping;

L. The applicant will comply with MVC condition that they will preserve, restore, or historically replicate the treatments within the historic Denniston building's sanctuary...and permanently protect the space through the condominium association's master deed and declaration of trust;

M. The applicant will comply with MVC condition that they will preserve the historic artifacts in the Denniston building in conjunction with the Martha's Vineyard Museum, and build an artifact display case within the Denniston center with storage space in the basement.

N. That appropriate signage is used for parking for residential and commercial usage with a review of the number of spaces.

Reasons/Findings

36. The Appeals Board Members who vote in favor of the motion to approve the application make the following findings;

a. The applicants have the right to apply for a comprehensive permit under M.G.L. 40B;

b. The application is consistent with local needs and is reasonable in view of the regional need for low and moderate income housing;

c. The compromises from the original proposed project agreed to by the applicant with the local citizens committee and the conditions set forth by both the Board and the Martha's Vineyard Commission satisfy the need to protect the health and safety of the occupants of the proposed housing or of the residents of the town.

As the law provides, appeals, if any, shall be made pursuant to Section Seventeen (17) of Chapter 40 – A, The Zoning Act, and shall be filed within twenty (20) days after the filing of this decision in the Office of the Oak Bluffs Town Clerk.

Said Board of Appeals is a legally constructed Appeals Board, exercising the powers granted to it under Section Fourteen (14) of Chapter 40 – A, and under Chapter 831, a 1977 Act further regulating the protection of lands and the waters of the island of Martha's Vineyard.

As required by law, The Board of Appeals certifies that copies of this decision and documents referred to in it, have been filed with the Oak Bluffs Building Inspector, Planning Board and Town Clerk. This decision does not relieve the applicant from obtaining all other necessary permits.

After expiration of the twenty (20) day appeal period, the applicant will receive the original copy of this decision. It will include the original signature page, signed by the voting members of the Board of Appeals presiding at the hearing. This copy will verify, by the Town Clerk, that no appeals have been filed, and if there were appeals filed those said appeals were dismissed or denied against this decision. At that time, the decision, along with the original signature page must be filed at the Dukes County Registry of Deeds before it is legally recognized.

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a comprehensive permit to the Island Affordable Housing Fund to renovate an existing building to include one (1) residential dwelling unit, one (1) meeting room, and one (1) office, and to build two (2) new buildings to include one (1) commercial unit, two (2) live/work units and seven (7) residential dwelling units.

(Kris Chvatal)

(Jane Lofgren)

(Peter Palches)

The following members of the Zoning Board of Appeals abstained from voting a comprehensive permit to the Island Affordable Housing Fund:

Gail Barmakian

Joseph Re

Received and filed in the Office of the Town Clerk:

Date:_____