

CAPE COD COMMISSION

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DATE: October 22, 1998 #TRMOD98039

TO: J. Richard Fennell, Trustee
Snow Inn Realty Trust

FROM: Cape Cod Commission

RE: Modification to Development of Regional Impact Decision
#TRMOD92023 Development of Regional Impact Enabling
Regulations, Section 9(n)

PROJECT: Snow Inn Complex, Snow Inn Road
Harwichport, MA

BOOK/PAGE: Book 6643, Page 14

MODIFICATION TO DECISION OF THE CAPE COD COMMISSION

SUMMARY:

The Cape Cod Commission (Commission) hereby approves with conditions a Major Modification to the Development of Regional Impact (DRI) decision of Snow Inn Realty Trust under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended and Section 9 (n) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12.

PROJECT BACKGROUND AND DESCRIPTION:

The Snow Inn DRI #TRMOD92023 was approved by the Cape Cod Commission on June 25, 1992 and modified on January 18, 1996. The applicant is Dr. J. Richard Fennell who is represented by Arlene Wilson of A.M. Wilson Associates Inc. The Snow Inn complex is located on Snow Inn Road in Harwichport, MA. Snow Inn Road intersects with Route 28 approximately 1/2 mile east of the Harwichport town center. Wychmere Harbor is directly east of the site with Nantucket Sound to the south. The site is bordered by town-owned conservation land and residential properties to the west. Proposed development and uses at the Snow Inn site requested as part of this major modification are as follows:



- construction of 34 condominium units with 108 bedrooms in 8 buildings of 2 to 3 stories not exceeding 37' above grade;
- provision of a total of 229 parking spaces; 68 basement level parking spaces for the condominium buildings, and 161 surface spaces;
- maintenance of recreational amenities including the existing pools, patios, and decks approved by the 1996 interim modification, manicured beach and children's play area;
- connection of the proposed 34 condominium units to the existing wastewater treatment plant;
- continued operation of the existing 525 seat restaurant with no modification to the building exterior;
- continued operation of the Snow Inn as authorized by the 1992 DRI permit;
- continued operation of the Beach Club for a maximum of approximately 600 memberships and 100 lockers, with some portion of the 100 food service seats authorized for remote service from the Snow Inn to be located near the Beach Club Pool.

PROCEDURAL HISTORY:

On August 11, 1998 Arlene Wilson, representing the applicant met with Commission staff and requested a minor modification to the Snow Inn Development of Regional Impact decision dated June 25, 1992 (#TRMOD92023) to allow the construction of 34 condominium units and the continuance, maintenance, and/or provision of other uses described above. The request for modification was received pursuant to Section 9(n) of the Cape Cod Commission's Enabling Regulations. In addition Ms. Wilson made a request for an extension of the seven year DRI permit period.

On August 24, 1998 before the Cape Cod Commission Regulatory Committee Arlene Wilson requested a minor modification to the June 25, 1992 Snow Inn DRI decision, and an extension of the seven year DRI permit period. Following review, the Regulatory Committee found that the proposed modification was a major modification rather than a minor modification and would be subject to a public hearing as required by Section 7 of the administrative regulations. The request for extension of the DRI permit period was referred to Commission Counsel.

A public hearing was conducted by a duly authorized subcommittee of the Commission in the Harwich Fire Department, Harwich, MA on September 24, 1998. The hearing was continued to October 7, 1998, at the Harwich Town Hall. On Wednesday September 30, 1998 Commission Counsel indicated that there was no authority for extension of the seven year DRI permit period.

Materials submitted for the record:

- letter requesting a minor modification to the Snow Inn DRI and for an extension of the seven year DRI permit period, A.M. Wilson Assoc, Inc. dated August 13, 1998
- consultant's report, site plan for proposed modification, A.M. Wilson Assoc,, Inc. dated August 13, 1998
- letter requesting extension of seven year DRI permit period, A.M. Wilson Assoc,, Inc. dated September 23, 1998
- draft findings and conditions example submitted by A.M. Wilson Associates, Inc, September 30, 1998
- Cape Cod Commission staff report dated September 21, 1998

TESTIMONY:

The September 24, 1998 Public Hearing held at Harwich Fire Department was opened by Subcommittee Chair, Bill Riley who introduced the Subcommittee Members at 7:05 P.M. Subcommittee Member David Ernst read the hearing notice. Arlene Wilson of A.M. Wilson Associates, a consultant for the proponent described the proposed modification and the original Snow Inn project approved by the Cape Cod Commission. Ms. Wilson compared the original DRI project of 64 units in 3-4 story buildings to the proposed modification consisting of 34 units with reduced wastewater, traffic, and site coverage impacts. She recognized staff recommendations for landscaping as outlined in the Staff Report and described the proponent's intention to utilize Rosa rugosa in parking lot planting islands. She described the proponent's intention that future landscaping would be similar to that encompassed in the original Snow Inn project.

The proponent, Dr. Fennell gave an overview of parking issues describing on-site parking as being in conformity with local parking bylaws because the restaurant and beach club were pre-existing uses. Dr. Fennell also gave an overview of architectural style changes of the proposed modification which he believed were more in keeping with traditional Cape Cod architecture than the original project. Arlene Wilson further described the proposed modification in terms of lighting and water resource issues and expressed a willingness to work with Commission staff on answering unresolved questions regarding these issues.

Project Planner, Ken Kirkey highlighted key issues of the proposed modification and how they related to the original approved Snow Inn project including the height and massing of proposed structures, landscaping, and lighting as well as water resource issues. Generally, Mr. Kirkey believed that the proposed modification was an improvement over the original project although there were still landscaping, lighting and water resource issues to be resolved. Specific concerns included the lack of a landscape plan encompassing contextually appropriate landscaping and a lighting plan in keeping with the goals and policies of the Regional Policy Plan.

Questions and comments from Subcommittee Members included a comment from Gwen Bloomingdale in support of staff recommendations for more plantings and appropriate lighting to reduce the project's visual impact. Subcommittee Member Sylvia Laffin raised a question regarding groundwater mapping, which was addressed by Arlene Wilson. Dave Ernst asked whether the current plan adequately addressed staff concerns related to lighting. Ken Kirkey responded that lighting and other issues could be resolved through a meeting with the proponent.

There were no comments from public officials. Several members of the public had questions related to parking, building height and massing, vehicular and pedestrian access to the site, and the construction time table of the proposed modification. Bancroft Wheeler of Harwichport expressed concern that project-related parking was not adequate, particularly related to the parking needs of the beach club. Ken Kirkey responded that parking is a local bylaw issue and that the proposed 34 condominium units appeared to be in compliance with the bylaw. Regarding the beach club and other uses, Mr. Kirkey said that proposed uses were less intensive than those of the original project or prior uses on the site. Mr. Kirkey stated that in order for the proposed modification to receive a Certificate of Compliance from the Commission it must be in compliance with all local bylaws. George Rockwood requested information regarding the height of proposed buildings in relation to heightened ground elevations on the site. Arlene Wilson explained that the approved project utilized the same ground elevations as a basis for height descriptions.

Bill Riley asked if there were any further questions, and there were none. Gwen Bloomingdale motioned to continue the hearing and keep the record open. Sylvia Laffin seconded the motion and with a unanimous vote the hearing was continued to October 7, 1998 at 5:30 at the Harwich Town Hall.

The October 7, 1998 public hearing continued from September 24, 1998 began at 5:35 p.m. Dorr Fox, Chief Regulatory Planner reviewed the draft decision recommending approval with conditions. He noted that the draft decision contained nine conditions related to design and community character issues and two related to water resources. Arlene Wilson representing the applicant, Dr. Fennell noted that the applicant was satisfied with the draft decision. There were no comments from public officials.

Subcommittee Chair, Bill Riley asked if there were any public comments. Questions related to retail uses, on-site parking requirements, and local bylaw enforcement were presented. Regarding the overall size of project retail space, it was noted that on-site retail space would be limited to the 1,000 square feet approved in the 1992 decision. In response to questions regarding the adequacy of proposed parking, it was noted by staff and subcommittee members that the proposed parking facilities must be in keeping with local bylaws. Subcommittee Member, Joe Travelo motioned to accept the draft decision as modified at this hearing. The motion was seconded and approved unanimously. The meeting was adjourned at 6:10 pm.

JURISDICTION:

The Snow Inn complex qualifies as a DRI under Section 3(g) of the DRI Enabling Regulations of the Cape Cod Commission Act (Act) as "any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units."

FINDINGS:

The Commission has considered the application of Snow Inn Realty Trust for a major modification to the Snow Inn Development Of Regional Impact (DRI) #TRMOD92023, and based on consideration of such application and upon the information presented, makes the following findings pursuant to Sections 12 and 13 of the Act:

- 1.) The primary issues during the original Snow Inn DRI review process related to Community Character. Due to the site's prominent location on Nantucket Sound and the smaller size and scale of existing structures in the surrounding area (predominantly 2-story residential structures) there was considerable concern regarding the height and massing of proposed structures at the Snow Inn site.
- 2.) The buildings and overall building massing proposed as part of this major modification are more in keeping with the character of the surrounding residential area than the four major structures approved as part of the 1992 Snow Inn DRI Decision. Relocation of most of the project's building mass away from the property's westerly boundary and abutting town conservation land is a significant improvement over the original proposal.
- 3.) The site plan for this proposed major modification eliminates all of the planting islands approved as part of the original DRI decision. The major modification application states that no changes are proposed to jetty side landscape design, that plant groupings will be as previously, and that the same landscape palette selected previously will continue to be utilized.
- 4.) The 1992 decision required an affordable housing contribution toward six affordable housing units in keeping with Section 5.1.2 of the RPP. The applicant has stated that the same contribution will be maintained with this proposed major modification.
- 5.) Due to the high intensity use of the site prior to the original Snow Inn DRI proposal (over 1,000 restaurant seats, 128 hotel units, 600 beach club members, etc.) the project as approved in 1992 would result in an overall reduction in traffic impacts. As proposed this major modification would further reduce traffic impacts due to the decrease in the number of proposed condominium units from 64 units to 34 units.

6.) Parking is a significant concern related to this project. On-site parking must fully comply with local bylaws.

7.) Past high intensity use of the site (over 1,000 restaurant seats, 128 hotel units, 600 beach club members, etc.) resulted in significantly increased parking impacts in comparison to those proposed in either the approved 1992 Snow Inn Decision or this proposed major modification of the 1992 decision. Proposed on-site parking appears to be in compliance with local bylaws if such bylaws do not require on-site parking for the beach club.

8.) The Regional Policy Plan (D.R.P. 6.2.20) states that all exterior lighting should be part of a project's architectural and landscape design concept. Some of the existing on-site exterior lighting fixtures are not in compliance with the Regional Policy Plan in terms of height or intensity discharge.

9.) The Snow Inn Site is not located in a Significant Natural Resource Area as designated in the Regional Policy Plan of the Cape Cod Commission. The site has been intensely developed for many years.

10.) The Snow Inn site is partially located within the watershed to Wychmere Harbor, as delineated on Regional Policy Plan Water Resources Classification Map II.

11.) As part of the Commission's Coastal Embayment Project, a tidal flushing study was completed for Wychmere Harbor and a land use assessment of development within the watershed was completed. Using the Buzzards Bay Project recommended critical loads, which were adopted by the Commission through the nitrogen loading technical bulletin, an annual SA critical load of 9,443 kg (or 21.3 kg/ac of watershed) was identified.

12.) In the 1992 project approval, the applicant was required to: 1) the prepare summer and winter water table contour maps for two years, 2) determine chloride concentrations in the site's monitoring wells, and 3) provide \$800 toward completion of a flushing study. To date, these conditions have not been completed.

13.) Based on conversations with project consultants, all wastewater on the site will be treated at the existing wastewater treatment facility on the site. The wastewater treatment plant flows are discharged within the Wychmere Harbor watershed and the proposed project modification wastewater flow is 37,455 gallons per day, which is a 28% reduction of wastewater flow from the approved 1992 project (52,159 gpd). The overall nitrogen loading concentration is projected to decrease from 7.2 ppm to 6.5 ppm.

CONCLUSION:

Based upon the findings above, the Cape Cod Commission hereby concludes:

The benefits of this proposed major modification outweigh the detriments resulting from the proposed development. This proposal for a Major Modification of the Snow Inn DRI approved by the Cape Cod Commission in 1992 is generally an improvement over the original project. Reductions in building mass and height would result in a project more in keeping with the surrounding community context. Other improvements include reductions in nitrogen loading and traffic impacts.

This Major Modification is in keeping with the goals and minimum performance standards of the Regional Policy Plan of the Cape Cod Commission and all local bylaws.

The Commission hereby approves with conditions a major modification of the Snow Inn Realty Trust Development of Regional Impact, pursuant to Section 13 of the Act.

GENERAL CONDITIONS:

1.) The Applicant shall obtain a Certificate of Compliance from the Commission or its designee for the 34 condominium units, before the local official responsible for issuing certificates of occupancy may issue a Certificate of Occupancy for any building. Unless otherwise indicated the applicant must meet all conditions of the 1992 Snow Inn approval. All conditions must be met prior to the issuance of a Certificate of Compliance.

2.) Prior to the granting of a Certificate of Compliance the project must be shown to meet all local bylaws including those related to on-site parking requirements.

PROJECT DESIGN:

1.) The plans submitted on August 11, 1998 shall become part of the written decision. Because these plans are architectural drawings and not construction documents, it is understood that some changes in these plans may be necessary. However, any change in either the architectural or site plans must be approved by the Cape Cod Commission Staff.

2.) The Regional Policy Plan (R.P.P. 6.2.5) states that landscaping that integrates buildings with their environment, enhances architectural features and provides amenities for pedestrians shall be provided on site by all new development. Prior to issuance of any Certificate of Compliance for any of the eight buildings encompassing the project's 34 condominium units the proponent shall provide a project landscape plan for review and approval by Commission staff.

3.) Utilizing staff recommended salt and wind tolerant plant materials the landscape plan shall include planting masses to be located between the Captain's House and Unit 36, and between and/or adjacent to each of the proposed condominium buildings and on the westerly side of the project's major on-site parking area. The installation of planting masses adjacent to and between proposed buildings utilizing

recommended plant materials, including salt tolerant evergreen trees will reduce the overall scale of the project's proposed structures.

4.) Planting islands shall be established at the easterly end of each of the three southerly parking aisles in the project's on-site shell coated parking area. The aisles shall be at a minimum of 3' wide and planted with site-appropriate materials. Planting islands encompassing wooden dividing barriers shall be established along the entire length of each parking aisle at a minimum width of 3' to be planted with site-appropriate materials.

5.) All lighting fixtures, standards, and exposed accessories to be utilized as part of the project shall be concealed or harmonious with other project design materials and designed in accordance with Technical Bulletin 95-001. The applicant shall provide a lighting plan for staff review and approval prior to the issuance of any building permit. All lighting shall meet the requirements of the technical bulletin prior to the issuance of any building permits.

6.) The following site/architectural plans shall become part of the written decision: Site Plan Sheet S-1 prepared by Fuller Associates, dated August 4, 1998; Exterior Elevations Sheets 1& 2 prepared by Fuller Associates, dated August 4, 1998. Any change to either the site or architectural plans, or elevations must be approved by the Cape Cod Commission or its designee. Prior to issuance of a building permit, final construction documents, based upon the above plans, shall be submitted to Commission staff for approval. No development activity, as development is defined in Section (2) e of the Act, shall commence prior to approval of these documents by Commission staff.

7.) The Size of the Snow Inn complex shall not exceed the following development limitations:

- Condominium Units - 34 Condominium-related bedrooms - 108
- Max. # on-site food service seats - 525 (Thompson's Clam Bar), 100 (Beach Club)
- Beach Club Membership - 600 members Beach Club Lockers - 100
- Max. # Snow Inn bedrooms - 20
- Max. # Beach Club, Restaurant, and Snow Inn washing machines - 9
- Max. Retail Square Footage - 1,000 sq. foot

8.) The following conditions as outlined in the original Snow Inn DRI Decision dated June 25, 1992 remain in effect as part of this Major Modification: Conditions # 4, 6, 7, 8, 9, 10, and 11.

9.) The following conditions as outlined in the original Snow Inn DRI Decision dated June 25, 1992 no longer apply as part of this Major Modification: Conditions # 1, 2, 3, 5, 12, and 13.

WATER RESOURCES:

1. The applicant shall complete the water table contour maps and chloride sampling required in the 1992 approval and submit the information to the Commission.
2. The applicant shall provide \$800 to the Commission toward the completion of a water quality-related project in the Town of Harwich. The project will be selected following consultation with town officials.

The Commission hereby grants Snow Inn Realty Trust a modification to a Development of Regional Impact approval with conditions, pursuant to Section 13 of the Act, for a proposed condominium development in Harwich, MA.

Herbert Olsen
Herbert Olsen, Chairman

10/22/98
Date

Commonwealth of Massachusetts

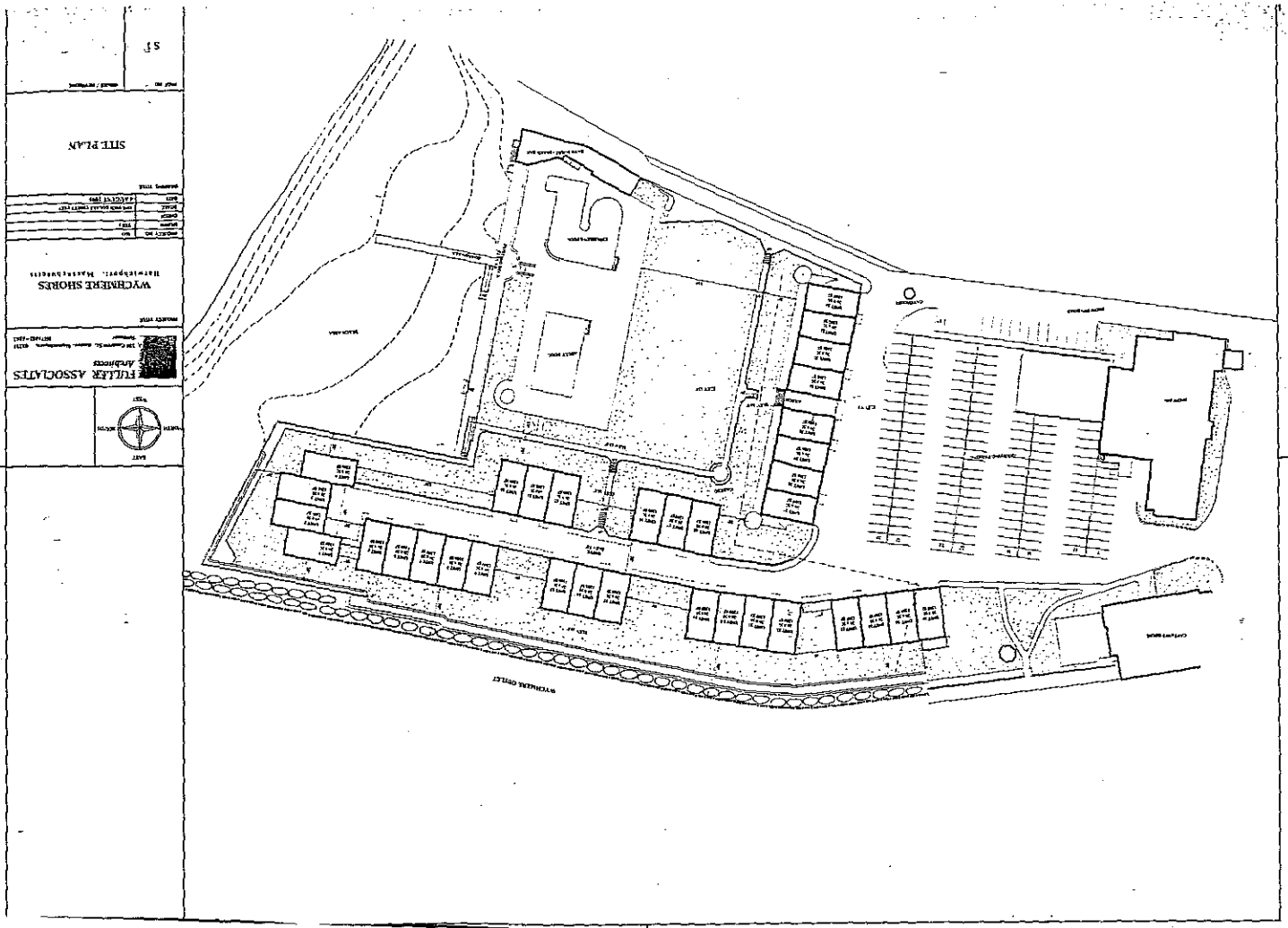
Barnstable, ss.

Subscribed and sworn to before me this 22 day of October 1998

Katharine L. Peters
Name, Notary Public

My commission expires:





**FINAL PLAN
APPROVED**
 BY THE CAPE COD COMMISSION
 DATE: *10/22/98*

as conditioned - see decision