



# CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

DATE: January 23, 2003

TO: Michael D. Ford, Esq.  
Stinson & Ford  
PO Box 665  
West Harwich, MA 02671

FROM: Cape Cod Commission

RE: Hardship Exemption  
Cape Cod Commission Act, Section 23

Applicant: Independence Medical Arts LLC

PROJECT# HDEX/CU02028

PROJECT: Independence Medical Arts  
100 Independence Drive  
Hyannis, MA 02601

BOOK/PAGE 14427/42; 14427/284, Land Court Certificate #163360  
14427/282, Land Court Certificate #163359

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission(Commission) hereby approves with conditions the Hardship Exemption application of Independence Medical Arts, LLC pursuant to Section 23 of the Cape

Independence Medical Arts #HDEX/CU02028

January 23, 2003 Decision

Page 1



Cod Commission Act (Act), c.716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on January 23, 2003.

### PROJECT DESCRIPTION

The project consists of the previously completed conversion of approximately 26,000 square feet (s.f.) of general office space and research and development (R&D) space to medical office space within an existing 46,000 s.f building located on a 7.81 acre site on Independence Drive within the B-Business district of Hyannis. The applicant intends to convert an additional 9200 s.f. of remaining R&D space to medical office in the near future. Local permits have not been issued for this later phase of the conversion. According to the applicant, the site contains 1.23 acres of wetland. The project is substantially complete and is open for business.

The applicant purchased the land and the existing building at 100 Independence Drive on November 8, 2001. Prior to the purchase, the building housed Sentinel packaging company and contained a mix of sales offices and R&D space. After obtaining the necessary permits from the town of Barnstable, the applicant converted approximately 17,800 s.f of the existing sales offices and 8000 s.f. of the R&D space of to medical office use (and added a 1500 s.f. entrance atrium). A portion of the existing R& D space has been reserved for future conversion to medical office use.

### PROCEDURAL HISTORY

In April 2002 the Cape Cod Commission, through the Chief Regulatory Officer, determined that the conversion from R&D and general office use to medical office use constitutes a change of use subject to review by the Commission as a DRI under Section 3(e) of the DRI Enabling Regulations as a "use change greater than 10,000 s.f." The applicant filed a DRI hardship exemption application with the Commission on September 19, 2002, and it was deemed complete on November 21, 2002. Duly noticed public hearings were conducted by the Commission pursuant to Section 5 of the Act on December 17, 2002 and January 23, 2003. At the December 17, 2002 hearing, the subcommittee voted unanimously to recommend granting a hardship exemption with conditions. A subcommittee meeting was held on January 17, 2003 to review the draft decision. The full Commission voted 12 in favor, 1 abstaining to approve the hardship exemption with conditions on January 23, 2003.

### Materials submitted for the record

*From the applicant:*

- Conceptual floor plan, copy of site plan review application

*Date received:*

4/26/02

Independence Medical Arts #HDEX/CU02028

January 23, 2003 Decision

Page 2

- Hardship Exemption application, DRI application, and supporting materials. 9/19/02
- 2 memoranda from Vanasse Associates re: traffic impacts 10/9/02
- Change of Use application 11/7/02
- List of hazardous materials 11/12/02
- Cover memo, MSDS sheets, 21E survey forms, hazardous waste manifests and Board of Health inventory sheet 11/15/02
- Sentinel floor plan 12/15/02
- Conceptual plans of entrance improvements, pavement removal, on-site deed restrictions 1/9/03
- Copy of plan showing Independence Drive layout 1/17/03

<i>From the Commission:</i>	<i>Date submitted</i>
• Letter to Michael Ford re: DRI notification	4/30/02
• Letter to Michael Ford re: clarification of DRI notification	5/15/02
• Letter to Tom Perry re: occupancy permit	7/2/02
• Letter to Michael Ford re: incomplete application	10/1/02
• Letter to Michael Ford re: complete application	11/26/02
• Subcommittee notice	11/26/02
• Subcommittee memo re: public hearing	12/11/02
• Staff report	12/11/02

The application and notices of public hearings relative thereto, the Commission staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

A public hearing was held on at the 1<sup>st</sup> District Courthouse, Assembly of Delegates chambers, in Barnstable Village on December 17, 2002.

Attorney Michael Ford, representing Independence Medical Arts, described the history and local permitting process for the project. He said that no town officials thought the project was a DRI requiring Commission review. Mr. Ford asked for a hardship waiver from natural resources/open space requirements since the incursions into the wetland buffer are a result of town officials' review. He closed his comments by stating that the hardship exemption should be granted based

on the applicant's complying in good faith with the local permitting process. He added that as a redevelopment project, the project is consistent with the land use goals of the RPP.

Martha Hevenor introduced the staff report and presented natural resource and wetlands issues, explaining staff's concern that the access drive and a portion of the new parking lot encroach upon the 100 foot wetland buffer area which is not allowed by the RPP. She also noted that hazardous materials associated with the medical office are reduced from Sentinel's use of the site. Tim Boesch presented a summary of transportation concerns. He noted trip generation and safety issues associated with the site access drive and with Independence Drive. Ms. Hevenor and Mr. Boesch both said that staff agrees the applicant has a hardship but that relief from the standards should be waived only for the portion of the building that has been converted and permitted.

Susan Kadar asked what is the distance between the entrance to Southwind and the site access drive. Mr. Boesch said it was about 200+ feet.

Mr. Randolph noted that there are several projects proposed in the same area of Independence Medical Arts and asked how they relate to each other in terms of traffic. Mr. Boesch explained that under the Fair Share requirements, each project must contribute a portion towards mitigation based on its impact.

The subcommittee noted the design problems with Independence Drive but did not feel that the Commission could change it. They agreed that cars exiting the medical arts building should be forced to turn right onto Independence Drive.

The subcommittee members then questioned the staff about their recommendations regarding the 9200 s.f. portion that has not yet been converted and explained that the building should be looked at as one project.

Mr. Broidrick suggested that to address open space issues, the undeveloped portions of the site be permanently protected. Mr. Ford said that would be acceptable. He added that he would recommend to this client that a turning island be constructed at the entrance to prevent left turns out and that he would see if the client would remove a portion of the asphalt parking within the wetland buffer at the rear of the building.

## JURISDICTION

Independence Medical Arts qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as "a change of use greater than 10,000 square feet."

## FINDINGS

The Commission has considered the application of Independence Medical Arts LLC for the conversion of general office space and research and development space to medical office use within an existing industrial building, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Section 23 of the Act:

### General

- G1. The Independence Medical Arts project consists of the conversion of approximately 26,000 square feet of general office use and research and development (R&D) use to medical office use within an existing industrial building that formerly housed Sentinel Packaging. The conversion has been completed and the building is open for business. The applicant plans to convert an additional 9,200 s.f. of former R&D space to medical office use in the future. Local permits have not been issued for the future conversion.
- G2. The goals and standards of the RPP encourage reuse and redevelopment.
- G3. The project is located within a certified growth/activity center (industrial activity center) under the Barnstable Local Comprehensive Plan.
- G4. The Town of Barnstable officials did not recognize that the project triggered Commission DRI review and issued a building permit for the project in November 2001. The applicant also received an Order of Conditions from the Barnstable Conservation Commission in June 2001 and Site Plan approval in July 2001. A Certificate of Occupancy was issued in July 2002.
- G5. The Cape Cod Commission, through the Chief Regulatory Officer, found jurisdiction of the project in April 2002 as a change of use exceeding 10,000 s.f. floor area. The conversion was substantially complete at this time. Following discussions with the applicant's attorney and a review of documents submitted for local permitting requirements, Commission staff identified

issue areas where the change of use may result in increased impacts to the resources protected by the Act and evaluated the project's compliance with the Regional Policy Plan in the following areas: transportation, natural resources/open space, and hazardous materials.

G6. The applicant would suffer great hardship if required to revise the project to meet the minimum performance standards of the RPP, both in terms of having to undo work which was completed and having to expend additional funds which were not budgeted for completion of the project. To support the applicant's claim of financial hardship, a financial statement documenting project costs was provided.

### Transportation

T1. The previous uses at 100 Independence Drive (prior to the Independence Medical Arts' ownership) consisted of the following:

- 21,672 square feet of Research and Development and
- 24,446 square feet of General Office

At the time of application:

- 25,748 square feet of General Office and Research and Development had been converted to
- 25,748 square feet of Medical Office with an addition of 1,560 square feet of Medical Office (entrance atrium).

For future conversion, the applicant proposes to:

- convert 9,170 square feet of Research and Development to
- 9,170 square feet of Medical Office.

The final proposed configuration will consist of:

- 36,478 square feet of Medical Office and
- 11,200 square feet of General Office.

T2. Based on the Institute of Transportation Engineer's (ITE) *Trip Generation* Manual land use categories 710-General Office, 720-Medical Office, and 760-Research and Development, the total project is estimated to generate:

- 68 New Weekday Morning Peak Hour trips

- 107 New Weekday Evening Peak Hour trips
- 784 New Weekday Daily trips and
- 110 New Saturday Peak Hour trips (if the facility is open on Saturdays.)

T3. The conversion of the remaining 9,200 square feet from Research and Development to Medical Office is estimated to generate 22 new peak hour trips. A reduction of 10% of peak hour traffic is allowed under MPS 4.1.3.3 since the project is in a growth/activity center, reducing this impact to 20 peak hour trips. It is estimated 70% of the site traffic would use the Route 132 and Independence Drive intersection, or 14 trips. Based on this amount of traffic and the cost estimates to improve this intersection, the applicant's fair share at this location is \$5,585. In order to meet the requirements of MPS 4.1.3.4 at this intersection, the applicant has agreed to pay the fair share estimate.

T4. The project in its final configuration as proposed complies with the following MPS:

4.1.3.2' Acceptable site driveway operations

4.1.3.3 For meeting the minimum performance standards under Goal 4.1.3, a 10% reduction is allowed in Growth/Activity Centers and 25% in Growth Incentive Zones.

T5. The project in its final configuration as proposed does not comply or compliance is unknown with the following MPS:

Goal 4.1.1: SAFETY

4.1.1.1 General safety

4.1.1.2 Safety analysis and mitigation for locations Impacted by 25 or more new peak hour trips

4.1.1.3 Access management and restriction to lower volume street

4.1.1.5 Signage, utility poles and boxes, and lighting located to not cause visual obstruction, glare, or distractions

4.1.1.6 Site access/egress shall minimize impact on road system. Bicycle and pedestrian connections shall be included to connect to adjoining properties

4.1.1.7 Sight distances shall meet standards

4.1.1.8 Safety mitigation shall occur prior to occupancy

4.1.1.9 Driveway width shall not exceed MHD standards

Goal 4.1.2: TRIP REDUCTION

4.1.2.1 Reduction/offset of 25% of increase in summer site traffic on daily and peak hour basis

- 4.1.2.5 Bicycle, pedestrian, and other non-motorized accommodation in design where appropriate
- 4.1.2.6 Parking limited to requirements under local zoning or a parking analysis accepted by the Commission

Goal 4.1.3: MAINTAINING OPERATIONS / PERFORMANCE

- 4.1.3.1 Regional Roadways are all roadways with a class higher than local as designated by the Cape Cod MPO
- 4.1.3.4 Analysis and mitigation required to maintain no-build conditions or provide fair share. (Project is in partial compliance with this standard.)
- 4.1.3.9 Preservation of existing transportation rights-of-way, provide frontage right-of-way for bicycles and pedestrians
- 4.1.3.12 Consistency with LCP, RTP, RIF, etc.

T6. To partially address the Independence Drive site driveway safety issues, the applicant has agreed to install signage, pavement markings, and a traffic island at the driveway entrance to encourage the right-turn-in / right-turn-out operation of the driveway.

T7. The Commission has determined that a hardship exists for this project. In accordance with Section 23 of the Act, the Commission waives the requirements of transportation MPS of the RPP where the project is non-compliant to alleviate the hardship. While the project does not comply with all the transportation standards, it does not result in substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Act.

### Natural Resources and Open Space

NR1. The 7.81 acre site is located within a mapped Significant Natural Resources Area (SNRA) due to its location within a public wellhead protection district. Three wetlands are located on the site: a small unnamed pond in the northern portion, Fresh Hole Pond to the northeast, and a small kettlehole (vegetated wetland) in the front of the site near Independence Drive. According to the natural resources inventory conducted by ENSR, Inc., no state listed rare species were found on the site. A small population of Plymouth Gentian, a state-listed "species of concern" was found along the margins of the shores of Fresh Hole Pond.

NR2. MPS 2.3.1.4 requires the provision and/or maintenance of undisturbed buffer areas of at least 100 feet from the edge of wetlands. Existing conditions plans (pre-dating the building's

conversion by the applicant) show parking and cleared areas as well as a portion of the building within the 100 foot wetland buffer areas. While these encroachments into the buffer areas are associated with the previous use, Independence Medical Arts' expansion of the parking areas in front of the building as well as the creation of the new entrance drive resulted in additional encroachments into the buffer areas.

NR3. MPS 2.3.1.4 requires stormwater discharges to be located at a minimum of 100 feet from wetlands and water bodies. The placement of leaching chambers near the site drive within 100 feet of the vegetated wetland and by the building lawn in the vicinity of Fresh Hole pond does not comply with this standard.

NR4. The applicant has agreed to remove a portion of the pre-existing asphalt parking area in the rear of the site from within the 100 foot wetland buffer area.

NR5. As a redevelopment project within an SNRA, the proportion of open space required would be 1:2 (total development area to total open space) unless the proportion of existing development to open space is less than that, in which case the project would be required to maintain the existing proportion of development to open space on site (but not less than a 2:1 ratio), either as on-site open space or as an equivalent cash or off-site contribution. The project may not be in compliance with the open space requirement, but the additional on-site development associated with the conversion would not result in substantial detriment to the public good.

NR6. The applicant has agreed to place a deed restriction on the undeveloped portions of the site to limit further loss of on-site open space.

#### Hazardous Materials

Haz1. According to maps produced by the Cape Cod Commission for the 2002 Regional Policy Plan, the project site is in a Wellhead Protection District/Zone II area and thereby must comply with MPS 4.3.1.3. In terms of hazardous materials attributable to the most recent tenant of the existing building, information submitted by the applicant's attorney indicates that Sentinel Products used hazardous materials including Azoxy Compound (a blowing agent used in making plastics), lubricating oil, trimsol (a lubricant), paint thinner, xylene, trichloroethane, heat transfer oil, hydraulic oil, compressor oil, ethylene glycol, and ZEP solvent (a combination of petroleum naphtha, methylene chloride and trichloroethylene). Hazardous waste generated included chromic acid waste and rinse, chloroethane sludge and used ZEP solvent.

Haz2. According to information submitted by the applicant's attorney, hazardous materials and wastes attributable to the medical office includes (on a daily basis) sharps (needles, lancets), materials contaminated with body fluids, bleach and trichloric acid. The sharps container will be 12x14x12 inches, and will be used to collect all items or materials that come in contact with human body fluids. Additionally, according to the applicant's attorney, the Medical Arts facility currently has an X-ray machine with digital film development capability. The facility may bring another X-ray machine on site, but it will also use digital technology. The medical office also uses medicines, including vaccines, steroids and pain killers, but these are exempt from the RPP's definition of Hazardous Materials. A limited amount of materials will be kept on site for facility cleaning, but this is also exempt from the RPP.

Haz3. The information submitted by the applicant indicates that the hazardous materials and wastes attributable to the medical center in this case are significantly less than that used, handled, stored or generated by Sentinel Products.

### CONCLUSION

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

The applicant demonstrated a substantial hardship as noted in Findings G4 through G6. Desirable relief may be granted to the applicant without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Independence Medical Arts , provided the following conditions are met:

### CONDITIONS

#### General

G1 The hardship exemption approved herein is for the Independence Medical Arts LLC project, which consists of the previously completed conversion of approximately 26,000 s.f. of former general office space and R&D space to medical office space. It also includes a future conversion

of approximately 9,200 s.f. of former R&D space to medical office space. Any increase in the floor area proposed for future conversion shall be reviewed by the Commission.

G2. The Hardship Exemption is valid for a period of seven years from the date of the written decision. All permits associated with this approval must be issued within 7 years.

G3. Prior to the issuance of a building permit for the future conversion of additional building space, the applicant must obtain a preliminary Certificate of Compliance from the Commission stating that all conditions pertaining to issuance of a preliminary Certificate of Compliance have been met.

G4. The applicant shall notify Commission staff of the intent to seek a preliminary Certificate of Compliance at least thirty (30) days prior to the submittal of a building permit application for any additional conversion of building space and 30 days prior to the anticipated date of occupancy. Such notification shall include a list of key contact(s) for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the applicant in writing of any deficiencies and corrections needed. The applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The applicant agrees to allow Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.

G5. Prior to receiving a Certificate of Occupancy from the Town of Barnstable, the applicant shall obtain a final Certificate of Compliance from the Commission.

G6. The additional converted building space shall not be occupied until a final Certificate of Compliance is received from the Cape Cod Commission.

G7. This hardship exemption is granted based on the following plans dated 4/12/01, prepared by Sullivan Engineering, Osterville, MA.:

- Proposed Grading and Site Improvements, 70/100 Independence Drive
- Overall Parking Plan, 70/100 Independence Drive
- Existing Conditions Plan, 70/100 Independence Drive

Any changes to the site plans shall be reviewed by the Commission.

### Transportation

T1. Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall make a one-time payment of \$5,585 to Barnstable County/CCC for the purpose of studying, designing, operating, promoting, and/or building transportation improvements in the project's study area, or in the Town of Barnstable in general.

T2. Prior to the issuance of a final Certificate of Compliance, the applicant shall construct a traffic island, directional signage, and pavement markings at the facility's site driveway on Independence Drive in accordance with the conceptual plan submitted on 1/9/03. Final plans shall be approved by Cape Cod Commission staff.

### Natural Resources and Open Space

NR1. Prior to the issuance of a final Certificate of Compliance, the applicant shall remove a portion of the asphalt parking area at the rear of the site and revegetate it as shown on conceptual plans submitted on 1/9/03. Final plans shall be approved by Cape Cod Commission staff.

NR2. Prior to the issuance of a final Certificate of Compliance applicant shall record deed restrictions on the existing open space on site, as shown on conceptual plans submitted 1/9/02. Final plans shall be approved by Cape Cod Commission staff.

### Hazardous Materials and Wastes

Haz1. Independence Medical Arts shall not use, treat, generate or store on site, or dispose of on site or off site, hazardous wastes or hazardous materials in excess of 25 gallons (or the dry weight equivalent) any time. The Commission shall be notified in writing of any changes to the facility's use, treatment, generation, storage or disposal of hazardous materials or hazardous wastes that affects this condition in such a way as to be in excess of the 25 gallon (or dry weight equivalent) quantity limit. Any such changes to the facility's use, treatment, generation, storage or disposal of hazardous materials or hazardous wastes shall be reviewed subject to Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 5/30/02, and as amended from time to time.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of Independence Medical Arts, LLC pursuant to Section 23 of the Cape Cod Commission Act , c. 716 of the Acts of 1989, as amended for the Independence Medical Arts project located in Hyannis, MA.

Robert D. Deane

Robert D. Deane, Chair

2/20/03

Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 20<sup>th</sup> day of February 2003, before me personally appeared Robert Deane, to me known to be the person described in an d who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Katharine L. Peters

Notary Public

Commonwealth of Massachusetts

My Commission expires:

