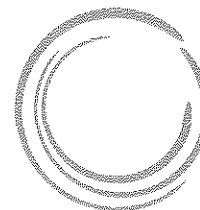


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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD  
COMMISSION

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Date: April 7, 2011

To: Sharon Lynn, Town Manager  
260 Commercial Street  
Provincetown, MA 02657

From: Cape Cod Commission

RE: Modification of a Development of Regional Impact  
Project of Community Benefit Hardship Exemption

Applicant: Town of Provincetown  
C/o Town Manager

Project: Cape End Manor / Seashore Point

Project Location: 100 Alden Street  
Provincetown, MA 02657

Project Number: HDEX/POCB # 05030

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### BACKGROUND

The above referenced project, the Cape End Manor, now called Seashore Point, was approved, with conditions, by a vote of the Cape Cod Commission (Commission) on January 12, 2006 as a Hardship Exemption (HDEX) Project of Community Benefit (POCB). The approved project was the demolition of an existing Town-owned and operated 17,721 square foot nursing home and the construction of a new 184,434 square foot continuing care facility on Alden Street in Provincetown. The 2006 HDEX/POCB decision envisioned the facility would be constructed in at least two phases.



### PRIOR MODIFICATIONS

In decisions dated March 20, 2007, October 15, 2007, December 12, 2007 and April 25, 2008, the Commission's Executive Director granted Minor Modifications Type #1 to the 2006 HDEX/POCB decision to amend the affordable housing requirements and authorize several adjustments to the project site plans.

### CURRENT MODIFICATION REQUEST

In a letter dated March 31, 2011 to Paul Ruchinskas, Commission Affordable Housing Specialist, Kevin Comick, Seashore Point's Executive Director, notes that the Board of Selectmen in Provincetown approved the facility's request to move two (2) affordable units scheduled for Phase II into Phase I and to change the market rate units from an entry fee model to a condominium ownership model.

According to communications received by Mr. Ruchinskas on February 17, 2011, the proposed changes are related. One of the affordable units is currently vacant, and by moving the remaining two affordable units into Phase I, Seashore Point will be able to conduct one outreach, marketing and lottery effort to fill the three affordable units. This will satisfy the project's affordable housing requirement per the 2006 HDEX/DRI decision (as amended). These changes will also allow Phase II to be exclusively market rate, and use a condominium ownership model.

The requested change to the market rate units from an entry fee model to a condominium sales model impacts Finding G7 and Finding AH3 of the 2006 HDEX/POCB decision (as amended). The requested change to have all the project's Commission-required affordable units in Phase I changes Finding AH4 and eliminates the need for Condition AH5 of the 2006 HDEX/POCB decision (as amended).

### COMMISSION ENABLING REGULATIONS

Section 13(c) of the *Enabling Regulations* (as amended March 2011) sets out the types of DRI modifications. A Minor Modification Type #1 is defined as "*revisions that are a result of more restrictive conditions imposed by a local board or technical corrections or changes that the Executive Director or his/her designee determine are de minimus changes to the project.*" The *Enabling Regulations* also state that Minor Modifications #1 "*shall be approved by the Executive Director or his/her designee and reported to the Regulatory Committee and do not require further review by the Commission.*"

### DETERMINATION

The Executive Director of the Cape Cod Commission has determined that revisions to the findings and conditions of the January 12, 2006 original HDEX/POCB decision, as modified, to move two (2) affordable units from Phase II to Phase I and to change the market rate units from an entry fee model to a condominium sales model constitute *de minimus* changes, and are approved as a Type 1 Minor Modifications according to Section 13 of the Commission's *Enabling Regulations* (as amended March 2011).

### Changes to HDEX/POCB Decision

The following changes shall be made to the findings and conditions of the original Hardship Exemption Project of Community Benefit decision, as amended, to reflect the requested changes as described above. New text is shown in **bold**. Text to be deleted is shown in ~~strikeout~~.

### ***Findings – Accommodate Change from Entry Fee to Condominium Model***

G7. The Applicant has shown that fully complying with the requirements of the RPP would create a financial hardship, particularly the expense and time to prepare the required traffic studies. In addition, full compliance with the affordable housing requirements would affect the viability of the project and its ability to provide important health services through its outpatient care, nursing home and assisted/independent living units which are substantially supported by entry fees **and/or condominium sales proceeds** and rental revenue generated from the proposed mix of units. The Applicant has also shown that federal and state regulations controlling nursing bed facilities prevent the Applicant from deed restricting any of the skilled nursing beds to Medicaid eligible patients, although the facility is Medicaid licensed and all of the skilled nursing beds are Medicaid eligible.

AH3. MPS 5.1.8 states that *“On-site affordable housing units created by this section shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units.”* MPS 5.1.9 states that *“the type (i.e. rental, homeownership), bedroom composition, and unit size of the affordable housing units resulting from Minimum Performance Standards 5.1.1 and 5.1.2 shall be subject to the area’s priority housing needs as determined by the Commission in coordination with the Five Year Consolidated Plan and Local Comprehensive Plans.”* In the recently completed Five Year Plan, rental housing for both elderly (one to two person) and small related households (two to four person) was identified as a high priority and need.

To be consistent with these standards, the affordable units would have to be proportionately distributed among the various unit sizes, i.e. a minimum of one affordable studio, five affordable one-bedroom units, and two affordable two-bedroom units. The Applicant is proposing that at least three of the one-bedroom apartments and a maximum of six of the studio apartments will be affordable and that entry fees **and/or condominium sales proceeds** will only be charged for the market rate units and not the affordable units.

The Applicant has shown that meeting the unit distribution requirements would threaten the project’s viability as approximately 92% of the cost of developing the care campus will be funded by the entry fees from the market rate independent living units and conformance with the standards of MPS 5.1.8 and 5.1.9 would result in a loss of approximately \$800,000 in revenue for the project. Therefore, the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 5.1.8 and 5.1.9 to allow the proposed distribution of affordable units is the minimum relief required to alleviate the hardship, and,

- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

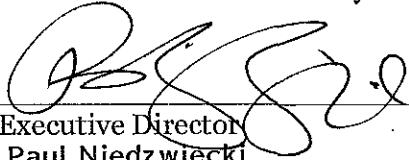
**Findings – Accommodate Creation of Affordable Housing Units in Phase I**

AH4. The Applicant has proposed that five ~~the nine (9)~~ of the affordable independent living apartments will be included in Phase 1 of the project, ~~and the remaining four affordable apartments will be included in Phase 2 of the project.~~ This rate and timing of the inclusion of the affordable apartments satisfies MPS 5.1.6.

**Conditions – To Accommodate Creation of Affordable Housing Units in Phase I**

AH5. ~~Prior to the issuance of a Preliminary Certificate of Compliance for Phase 2, the Applicant shall provide to the Commission copies of the following:~~

- ~~1. A list of the location and type of the four affordable apartments to be included in this phase.~~
- ~~2. Final construction specifications and plans.~~
- ~~3. An affirmative, fair marketing and tenant selection plan that has been approved by Commission staff. The selection plan shall include the policy for balancing eligible internal transfers and external applicants when filling subsequent vacancies in the affordable units. The tenant selection plan may also include a preference for Barnstable County residents (defined as a person who lives, works, grew up, or has immediate family in a town in the County).~~

  
\_\_\_\_\_  
Executive Director  
Paul Niedzwiecki

4/7/11  
\_\_\_\_\_  
Date

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

April 7, 2011

Before me, the undersigned notary public personally appeared

Paul Niedzwiecki in his/her capacity as Executive Director of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

Gail P. Hanley  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10.13.11