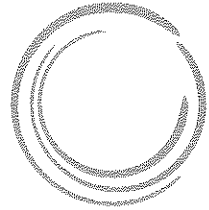


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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Date: May 31, 2011

To: Richard Hayden
Stratford Capital Group
100 Corporate Place
Suite 404
Peabody, MA 01960

From: Cape Cod Commission

Re: Minor Modification
Development of Regional Impact Hardship Exemption
Project of Community Benefit
Cape Cod Commission Act, Sections 12, 13 and 23

Applicant: Stratford Capital Group
100 Corporate Place
Suite 404
Peabody, MA 01960

Project: Simpkins School Redevelopment

Project #: TR/HDEX 10018

Project Location: 134 Old Main Street, South Yarmouth, MA

Book and Page: Book 10 Page 180

Land Court: Certificate of Title # 2399 Plan # 14244-A

INTRODUCTION

The Simpkins School redevelopment project was approved as a Development of Regional Impact (DRI) Hardship Exemption/Project of Community Benefit (HDEX/POCB), with conditions, by a



vote of the Cape Cod Commission (Commission) on January 6 2011. The 2011 DRI/HDEX/POCB decision has not been modified to date since the Commission granted it.

MODIFICATION REQUEST

On May 11, 2011, the Commission received by Email a letter from Richard Hayden of Stratford Capital Group requesting that the Commission consider a Minor Modification Type #1 of the January 6, 2011 decision. Mr. Hayden's letter states in part "*Stratford is proposing switching seven (7) of the sixty-five (65) units, (10.8%), from affordable housing units to market rate units.*" The May 11, 2011 Emailed letter also states "*the Town of Yarmouth's Community Housing Committee (CHC) requested this of us in our meetings to secure their support during our zoning and permitting process. The CHC suggested integrating market rate units to target local residents of mixed incomes that would entertain living in the Simpkins School Residences.*"

As regards the Applicant's request to change seven (7) of the units from affordable to market rate, the Commission's January 6, 2011 decision acknowledges in several findings the Applicant's stated intent to create 65 100% affordable units. Also, General Finding 5 (GF5) of the decision states in part that two of the project's probable includes "*meeting BDP AH1.16, which establishes a priority for affordable rentals*" and "*creating a significant amount of affordable and visit-able units*". Creating fifty-eight (58) affordable rentals still meets BDP AH1.16, and the project still creates far more affordable units than would be required by the Regional Policy Plan.

As regards other findings or conditions of the January 6, 2011 DRI/HDEX/POCB decision, Mr. Hayden's letter states "*... the proposed change does NOT involve changes of use; changes to the Site Plan; changes in the number or character of units, floor area or outdoor area; or changes to architectural design or building façade.*"

COMMISSION ENABLING REGULATIONS - MODIFICATIONS

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 Commission has determined that revisions to the findings and conditions of the January 6, 2011 DRI/HDEX/POCB decision, to allow the Applicant to switch seven (7) of the proposed units from affordable to market rate units, without any other changes to the proposed project, at the request of the Town of Yarmouth's Community Housing Committee constitutes a *de minimus* change, and is approved as a Type 1 Minor Modification according to Section 13 of the Commission's *Enabling Regulations* (as amended March 2011).

Changes to DRI/HDEX/POCB Decision

The following changes shall be made to the findings and conditions of the January 6, 2011 DRI/HDEX/POCB decision reflect the requested change as described above. New text is shown in **bold**. Text to be deleted is shown in ~~strikeout~~.

Findings

GF6. The Commission finds that the proposed project qualifies for designation as a Hardship Exemption Project of Community Benefit in that the project confers upon or result in distinct benefits to the community and citizens of Barnstable County consistent with Sections 1(a) and 1(c) of the Act as development of an adequate supply of fair affordable housing and by preservation of historical, cultural, archaeological, architectural and recreational values. The Commission also finds because the project is the renovation of and an addition to a historically significant building that is listed as a contributing structure to the South Yarmouth/Bass River National Register Historic District into 65 ~~new 100% affordable~~ housing units (**58 affordable and 7 market rate**) that full compliance with Minimum Performance Standards TR0.2, TR3.1, the Building Envelope portion of MPS E1.4 for the existing building, and the Building Envelope portion of MPS AH1.10 for the existing building would constitute a financial hardship by adding an estimated \$500,000 to \$1,000,000 to project costs, and would diminish these two community benefits to be conferred to Yarmouth by potentially making the project financially infeasible.

GF7. The proposed project consists of the renovation of the interior of a 1930 school building and adding 39,366 square feet (in a 14,000 square foot footprint) to the rear of the existing building. The project will also add new parking spaces on the north side of the property, upgrade the site drainage and install a new on-site septic system. The Applicant has also agreed to provide a new parking lot as part of the project, to be dedicated to the Town-owned athletic fields at no cost to Yarmouth. The renovation will result in an 81,200 square foot building, and creates sixty-five (65) ~~100% affordable~~ rental units (**58 affordable and 7 market rate**) for households age 55 and over.

TF7. Because the former Simpkins School is not located in an Economic Center on the Regional Land Use Vision Map, and has not been in operation within the last three (3) years, the Commission cannot automatically credit the project for the former traffic pursuant to MPS TR0.2. However, the Commission finds that a financial hardship exists from the requirement of MPS TR0.2 that restricts use of a traffic credit for a use that has been discontinued or vacated for five or more years. The Commission allows the Applicant a traffic credit for mitigation purposes. The Commission finds that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission finds that the relief granted relates directly to the nature of the hardship and is the minimum necessary to address the hardship. The Commission finds because the project is the renovation of and an addition to a historically significant building that is listed as a contributing structure to the South Yarmouth/Bass River National Register Historic District into 65 ~~new 100% affordable~~ housing units (**58 affordable and 7 market rate**), that full compliance with MPS TR0.2 would constitute a financial hardship by adding an estimated \$500,000 to project costs, and would diminish community benefits conferred to Yarmouth which are the development of an adequate supply of fair affordable housing and by preservation

of historical, cultural, archaeological, architectural and recreational values by potentially making the project financially infeasible.

MPS TR3.1 requires all DRIs to perform a Level of Service analysis at their driveway regardless of traffic generation. This MPS was intended to require large-scale development with significant traffic credits to perform Level of Service analysis at their driveways so that the Commission would not potentially approve a project with failing driveway Level of Service. The Commission finds that this project is not a large-scale development with respect to MPS TR3.1. The Commission finds that a financial hardship exists from the requirement of MPS TR3.1 to perform a Level of Service analysis at the site driveway. The Commission grants the Applicant relief from the need to perform a Level of Service Analysis according to MPS TR3.1. The Commission finds that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission finds that the relief granted relates directly to the nature of the hardship and is the minimum necessary to address the hardship. The Commission finds because the project is the renovation of and an addition to a historically significant building that is listed as a contributing structure to the South Yarmouth/Bass River National Register Historic District into 65 new ~~100% affordable~~ housing units (**58 affordable and 7 market rate**), that full compliance with MPS TR3.1 would constitute a hardship by adding to project costs, and would diminish community benefits conferred to Yarmouth which are the development of an adequate supply of fair affordable housing and by preservation of historical, cultural, archaeological, architectural and recreational values by potentially making the project financially infeasible.

EF2. The Commission finds that because of the proposed complete interior renovation of the existing school building, and because the building was not operational and therefore has no energy performance or consumption data reflective of the building's use for at least three years (including for the proposed change of use) on which to base recommendations of an energy audit, that it is appropriate to waive MPS E1.1 (Redevelopment Energy Audit). The Commission finds that the Applicant has met its burden to show a Redevelopment Energy Audit would be unduly burdensome, and that a hardship exists from this requirement. The Commission grants the Applicant relief from MPS E1.1. The Commission finds that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission finds that the relief granted relates directly to the nature of the hardship and is the minimum necessary to address the hardship. The Commission finds because the project is the renovation of and an addition to a historically significant building that is listed as a contributing structure to the South Yarmouth/Bass River National Register Historic District into 65 new ~~100% affordable~~ housing units (**58 affordable and 7 market rate**), that full compliance with MPS E1.1 would constitute a hardship by adding to project costs, and would diminish community benefits conferred to Yarmouth which are the development of an adequate supply of fair affordable housing and by preservation of historical, cultural, archaeological, architectural and recreational values by potentially making the project financially infeasible.

AHF1. Because the project involves the redevelopment of an existing school building into 65 affordable-housing units (**58 affordable and 7 market rate**), the Commission finds that MPS AH1.2 (10% Requirement for Subdivisions of 10-plus Lots), AH1.3 (Cash Option), MPS AH1.5 (Off-site Option Criteria), MPS AH1.6 (Location of Off-site Option), MPS AH1.7 (Timing of Off-site Contribution), MPS AH1.8 (Timing & Mix of Affordable Units), MPS AH1.14 (No

Reduction in Number of Existing Units) and MPS AH2.4 (Relocation Requirement) and all parts of AH3 (Mitigation for Commercial DRIs) are not applicable to this project.

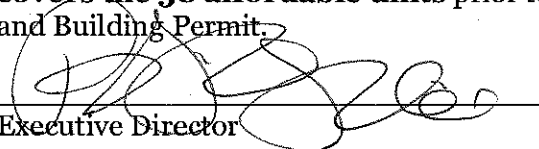
AHF9. Information and testimony submitted during the Commission's review indicates that all of the units will be affordable to households at or below 60% of area median income. **On May 11, 2011, the Commission received a request from the Applicant to switch seven (7) units from affordable to market rate.** The Commission finds that the project as proposed meets MPS AH1.11 (Pricing & Rents of Affordable Units). The Commission finds that in order to ensure compliance with MPS AH1.11, it is appropriate to require the Applicant to submit for Commission staff review and approval the final proposed rents for all units prior to issuance of a Preliminary Certificate of Compliance and issuance of a Building Permit in accordance with condition AHC5 of this decision.

Conditions

AHC5. To ensure compliance with MPS AH1.11, the Applicant shall submit for Commission staff review and approval the final proposed rents for ~~all~~ **the 58 affordable** units prior to issuance of a Preliminary Certificate of Compliance and issuance of a Building Permit.

AHC7. To ensure compliance with MPS AH1.12 and MPS AH1.13, the Applicant shall submit for Commission staff review and approval a report from the monitoring agent that describes how and certifies that any occupants of the **58 affordable** units are income eligible prior to issuance of the Final Certificate of Compliance and Certificate of Use/Occupancy.

AHC9. To ensure compliance with MPS AH2.1 and MPS AH2.3, the Applicant shall submit for Commission staff review and approval an affirmative marketing and tenant selection plan **that covers the 58 affordable units** prior to issuance of the Preliminary Certificate of Compliance and Building Permit.


Executive Director

5/31/11
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

May 31, 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