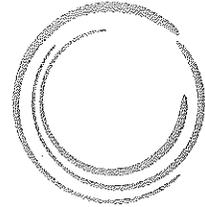


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CAPE COD  
COMMISSION

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Date: April 14, 2011

To: Eliza Cox  
Nutter, McClennen & Fish  
1513 Iyannough Road  
Hyannis, MA 02601-1630

From: Cape Cod Commission

RE: Modification of a Development of Regional Impact

Applicant: Joshua Zuckerman  
Pleasant Bay Health and Living Centers, LLC - Woodlands  
383 South Orleans Road  
Brewster, MA 02631

Project #: TR-20075

Project Name/Location: Pleasant Bay Assisted Living Facility / Woodlands  
South Orleans Road, Brewster, MA

Book/Page: Book 10930 Page 75  
Book 09773 Page 341  
Book 8660 Page 197  
Book 609 Page 28 (Parcel A)

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SUMMARY

The Cape Cod Commission (Commission) Regulatory Committee hereby approves the application of Joshua Zuckerman, Manager of Pleasant Bay Health and Living Centers, LLC (Applicant) for a Minor Modification Type #2 pursuant to Section 13 of the Commission's *Enabling Regulations* (as amended). This decision is rendered pursuant to a vote of the Commission's Regulatory Committee at a special meeting on April 14, 2011.

INTRODUCTION

The Pleasant Bay Assisted Living Facility, now called The Woodlands, was approved as a Development of Regional Impact (DRI), with conditions, by a vote of the Cape Cod Commission (Commission) on January 9, 2003.



Commission staff met on January 18, 2011 with project owner/operator Joshua Zuckerman, Attorney Eliza Cox of Nutter, McClennen & Fish and Laura Shufelt, Director of Development, Falmouth Housing Authority (who is also the monitoring agent for the project). In that meeting, Attorney Cox and Mr. Zuckerman indicated a desire to modify Affordable Housing (AH) conditions AH1 and AH3, subpart 5 of the 2003 DRI decision, as amended. They also indicated a desire to amend the recorded affordable housing deed restriction and the project's tenant selection plan.

The requested changes to the conditions and deed restriction would change the income eligibility for the six (6) required affordable units from 50% or less of median income as currently required by the DRI decision to 80% or less of median income.

The requested change to the tenant selection plan would be to reduce the minimum age limit for the affordable units from the current 85 years of age to 55 years of age.

#### OTHER MODIFICATION DECISIONS

The 2003 DRI decision was modified by Minor Modification Type #1 decisions issued on October 2, 2006, February 5, 2007 and November 6, 2007 which dealt with changes to the exterior lighting, the facility's exterior siding, and provided the right to place and maintain a driveway within the open space area, respectively.

#### JURISDICTION

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2010) provides that an applicant "*who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision, may apply for a decision modification.*"

Section 13(c)(ii) of the *Enabling Regulations* describes a Minor Modification 2 as "*a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or a small change to the findings or a condition of the original approval, which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different increased impacts to the resources protected by the Act and/or RPP.*"

#### REGULATORY COMMITTEE'S DETERMINATION

On March 28, 2011, the Commission's Regulatory Committee considered the proposed changes to the Woodlands DRI decision, and voted to approve the requested changes to the affordable housing conditions AH(1) and AH(3)(5), the affordable housing deed restriction, and tenant selection plan to implement the changes to conditions AH(1) and AH(3)(5) as a Minor Modification Type #2. The Regulatory Committee also voted that the modification to the 2003 DRI decision would become effective upon the Commission staff's receipt of evidence of recording of the amendment to the affordable housing deed restriction. On April 14, 2011 at a special meeting, the Regulatory Committee voted to approve the draft written Modification decision.

#### MODIFICATION TO THE 2003 DRI DECISION

The following changes shall be made to the conditions of the original 2003 DRI decision, as amended, to reflect the requested changes to the project. New or added text is shown in **bold**. Deleted text is shown in ~~strikeout~~.

Affordable Housing Conditions

AH-1. The applicant, in conformance with MPS 5.1.2 of the RPP, shall provide six (6) units within the assisted living facility as affordable units. The applicant shall designate at any one time six (6) units for elderly individuals whose gross income is ~~fifty (50%)~~ percent **eighty percent (80%)** or less of the median income or who are eligible for the Group Adult Foster Care Program (GAFC) under the MassHealth Medicaid Program for Group Adult Foster Care in addition to the Supplemental Security Income-Group (SSI-G) for the payment of rent. The affordable units shall be randomly scattered within the facility and shall provide studio and one-bedroom units in proportion to the overall ratio of such units within the facility at any time. Any six (6) units may be designated at any point in time so long as six units are maintained as affordable in perpetuity for the purpose of providing safe and decent housing to low income elders and conform to all terms and conditions of this decision. The income limits are established by the U.S. Department of Housing and Urban Development, as may be adjusted from time to time, for the Barnstable-Yarmouth MSA. Assets are calculated for income purposes in accordance with the federal low-income housing tax credit program (HUD passbook rate- currently 2%-imputed to fixed assets).

AH-3. Prior to the issuance of a Preliminary Certificate of Compliance by the Cape Cod Commission, the applicant shall provide to the Commission copies of the following:

AH-3(5). Draft monitoring agreement by and between the applicant and a housing authority or non-profit organization with experience in income and rent certifications, which shall provide, *inter alia*, for the applicant to file a report annually listing each unit occupied within the assisted living facility by an individual whose income is ~~fifty (50%)~~ **eighty percent (80%)** or less than the median income in the area, the rents and services charged for each unit and the income levels of the occupant of each of the identified units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the applicant for preparation of a monitoring report to be issued to the Cape Cod Commission. The applicant's obligation to pay the fee and provide a report shall commence upon the issuance of an occupancy permit and shall be payable yearly on or before April 15<sup>th</sup> of each year.

Royden Richardson  
Royden Richardson, Regulatory Committee Chair

04.14.2011  
Date

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

April 14, 2011

Before me, the undersigned notary public, personally appeared Royden Richardson in his/her capacity as Chairman of the Regulatory Committee, 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. Stanley  
Notary Public

My Commission Expires: 10.13.11