



CAPE COD COMMISSION

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DATE: November 4, 2004

TO: Jeff Zinn
Wellfleet Harbor Actors Theater
PO Box 797
Wellfleet, MA 02667

FROM: Cape Cod Commission

RE: Hardship Exemption
Cape Cod Commission Act, Section 23

Applicant: Wellfleet Harbor Actors Theater (WHAT)

PROJECT# HDEX/04011

PROJECT: Wellfleet Harbor Actors Theater
Adjacent to 2357 Route 6
Wellfleet, MA 02667

BOOK/PAGE 11882/131

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission(Commission) hereby approves with conditions the Hardship Exemption application of the Wellfleet Harbor Actors Theater (WHAT) pursuant to Section 23 of the Cape 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 November 4, 2004.

PROJECT DESCRIPTION

The project consists of a proposed 11,200± s.f., 189 seat theater facility on a 4.06 acre lot on the current site of the Wellfleet post office on Route 6. WHAT's current 90 seat seasonal theater facility is located by Wellfleet harbor. The applicant is seeking to expand its operations from a seasonal theater venue to a year-round performing arts facility.

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The new theater is proposed to be located 15 feet south of the post office building and will include a bridge connecting the theater to WHAT's (existing) second floor offices at the post office building. The entrance to the theater will face west towards the existing parking lot so that the post office (to the north), the theater entrance wall (on the east), and a hill (on the south) form a three sided courtyard. The entrance to the theater is intended to look like a stage/theater proscenium. This front area is also intended to serve as an informal gathering area/stage-like setting for small impromptu performances. The post office's existing parking lot and access drive will serve the theater as well. A significant portion of the site has been previously cleared and graded and is vegetated primarily with low second growth scrub, with a small wooded area in the southwest corner of the site. The property, located within Wellfleet's Commercial zoning district, is bordered by Route 6 to the east, a church to the south, residential structures to the west, and a retail plaza to the north.

The 4 acre lot is owned by a third party entity. WHAT intends to purchase the portion of the lot containing the proposed theater and its associated land area as a condominium. The condominium association controls the "common areas" of the lot.

PROCEDURAL HISTORY

The Commission received a mandatory DRI referral from the Wellfleet Zoning Board of Appeals on June 8, 2004. The applicant submitted a DRI Hardship Exemption application which was deemed complete on August 25, 2004. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on September 22, 2004. The public hearing was continued to the November 4, 2004 Cape Cod Commission meeting at the Assembly of Delegates chambers in the 1st District Courthouse in Barnstable Village, MA, where the hearing and the record were closed. The subcommittee held public meetings to deliberate on this project on September 22, 2004 and October 7, 2004. At the October 7, 2004 public meeting, the subcommittee voted unanimously to recommend to the full Commission that the hardship exemption be approved with conditions. At the final public hearing before the full Commission on November 4, 2004, the Commission voted unanimously to approve the hardship exemption, subject to conditions.

Materials submitted for the record

<i>From the applicant:</i>	<i>Date received:</i>
• Traffic study	12/2002
• "In-progress" draft/preliminary application	7/7/04
• Fee waiver request form and letter	7/22/04
• Hardship exemption application	7/30/04
• Email from Jeff Zinn re: open space	8/16/04
• Application addendum #1	8/17/04
• Letter from Coastal Engineering re: water supply calculations	8/19/04
• Letter/email clarifying POCB request	9/7/04
• Memo from David Michniewicz re: nitrogen loading calcs.	9/17/04
• Memo from Platt, Anderson, Freeman re: lighting	9/22/04
• Memo from Platt, Anderson, Freeman re: noise	9/22/04
• Memo from Platt, Anderson, Freeman re: hazardous materials	9/22/04

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- and noise 9/22/04
- Memo from Platt, Anderson, Freeman re: fuel 9/22/04
- Letter from Gerald Parent re: agreement for development 9/19/04
- Purchase & sales extension 9/20/04
- Memo from Jeff Zinn re: responses to staff report 9/22/04

From Commission:

- Letter to Jeff Zinn re: traffic mitigation 3/31/04
- DRI notification letter 6/14/04
- Letter to John Freeman re: incomplete application 7/13/04
- Letter to Rex Peterson re: tent 7/27/04
- Subcommittee notification 8/18/04
- Letter to Jeff Zinn re: complete application 8/25/04
- Cover memo to subcommittee 9/15/04
- Staff report 9/15/04
- Memo to subcommittee re: info for next meeting 10/5/04
- Memo/fax to Bill Scully re: site drive 10/21/04

From State and Local Officials:

- DRI referral 6/8/04
- Letter from Emily Beebe, Wellfleet Health & Conservation Agent re: tent/water use 8/25/04
- Letter from Richard Rosenthal, Wellfleet Police Chief re: site drive 9/20/04
- Letter from Congressman William Delahunt to RDA in support 9/22/04
- Letter from Representative Shirley Gomes in support 9/22/04
- Email from Rex Peterson, Ass't Town Administrator re: zoning compliance 10/25/04

From the public:

- Letter from Lezli Rowell re: concerns 8/25/04
- Letter from Florence & Martin Richman to ZBA in support 9/22/04
- Letter from Anne & John Fletcher, Jr to ZBA in support 9/22/04
- Letter from Frank & Gwyn Korahais to ZBA in support 9/22/04
- Letter from Toby Butterfield to ZBA in support 9/22/04
- Letter from Nancy R. Covaty to ZBA in support 9/22/04
- Letter from Susan & Martin Gauthier to ZBA in support 9/22/04
- Letter from Donald & Sara Robinson to ZBA in support 9/22/04
- Letter from Donald & Sara Robinson to ZBA in support 9/22/04
- Letter from Donald & Sara Robinson to ZBA in support 9/22/04
- Letter from Helen Miranda Wilson in support 9/22/04
- Letter from Liz Tighe to ZBA in support 9/22/04
- Letter from Nicholas Robinson to ZBA in support 9/22/04
- Letter from Dawn Roach to ZBA in support 9/22/04
- Letter from Grace Maas to ZBA in support 9/22/04
- Letter from Bill Roach to ZBA in support 9/22/04
- Letter from James & Reny Burrows to ZBA in support 9/22/04
- Letter from Liz & Manny Smith to ZBA in support 9/22/04
- Letter from Nina & Gerald Holden to ZBA in support 9/22/04
- Letter from Marla & Bertram Perkel to ZBA in support 9/22/04
- Letter from Fred & Jean Natkin to ZBA in support 9/22/04
- Letter from Ruby B. White to ZBA in support 9/22/04

- Letter from Linda Shea to ZBA in support 9/22/04
- Letter from Ted Wilson to ZBA in support 9/22/04
- Letter from Peter & Marieke Hall to ZBA in support 9/22/04
- Letter from Marion Simon to ZBA in support 9/22/04
- Letter from Paul & Shirl Weber to ZBA in support 9/22/04
- Letter from David & Aida Donald to ZBA in support 9/22/04
- Letter from Sonia March Nevis to ZBA in support 9/22/04
- Letter from Barbara Knapp to ZBA in support 9/22/04
- Letter from Herb & Denise Wyer to ZBA in support 9/22/04
- Letter from Joanna Fabris to ZBA in support 9/22/04
- Letter from Liz Aberdale & Tony Andrews to ZBA in support 9/22/04
- Letter from Gay & Walter Schenk to ZBA in support 9/22/04
- Letter from Suzanne M. Lawlor to ZBA in support 9/22/04
- Letter from K.Sokowski to ZBA in support 9/22/04
- Letter from Anne Marie B. to ZBA in support 9/22/04
- Letter from David Wright to ZBA in support 9/22/04
- Letter from Kimberly Deane to ZBA in support 9/22/04
- Letter from Wes & Susan Chapman to ZBA in support 9/22/04
- Letter from Nancy Davis to ZBA in support 9/22/04
- Letter from Nancy Deppen to ZBA in support 9/22/04
- Letter from Pat Roach to ZBA in support 9/22/04
- Letter from Robert & Joan Holt to ZBA in support 9/22/04
- Letter from Laurie Watts Bumpers to ZBA in support 9/22/04
- Letter from Judy & Edward Goldman to ZBA in support 9/22/04
- Letter from Lezli Rowell re: BOH restrictions 10/7/04
- Letter from David Rowell re: water use on site 10/7/04

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 at the Wellfleet Public Library on West Main Street on September 22, 2004. Attorney Myer Singer explained that WHAT is requesting a hardship exemption and said that the applicant is dependent on fund raising and has financial hardship in terms of full compliance with the Regional Policy Plan (RPP). Jeff Zinn, Producing Artistic Director, explained that the project would provide a year-round home to produce theater and would allow WHAT to provide community offerings/arts activities for the year round community, which currently lacks this type of arts center. John Freeman, project architect, reviewed the building plans and site design with the subcommittee.

Martha Hevenor provided a summary of the staff report comments and also explained the POCB process and review procedure. Scott Michaud presented the water resources comments, noting differences between the staff's nitrogen loading calculations and the applicant's. David Michniewicz of Coastal Engineering explained his methodology for the calculations.

The subcommittee focused its questions on traffic and water impacts. They asked about the number and timing of performances and the total number of seats. A substantial portion of the their questions pertained to nitrogen loading. They also reviewed the projects of community benefit procedure for review. They voted unanimously that the proposed theater is a project of community benefit but did not take a vote on granting the hardship exemption or whether relief from the RPP requirements can be granted. They directed staff to clarify at the subcommittee meeting where the project does not comply with the RPP so they would be able to evaluate the where the applicant is seeking relief and whether there is hardship.

JURISDICTION

WHAT qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as "new commercial construction greater than 10,000 square feet."

FINDINGS

The Commission has considered the application of the Wellfleet Harbor Actors Theater for a DRI hardship exemption 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 proposed WHAT theater project will serve as a year-round theater and performing arts center in a tourism dependent, rural area where no such facility exists. The new facility will provide artistic development and educational opportunities, including programs for children and senior citizens. WHAT's existing 90-seat seasonal theater is unsuitable for cold weather performances and has no classroom space. The small stage also limits the types of productions offered. According to the applicant, WHAT currently serves about 10,000 patrons annually. It is anticipated that the new facility will increase economic vitality in the area by extending the tourism season for small businesses and providing a local off-season cultural resource. The Commission finds that the proposed theater facility is a Project of Community Benefit (POCB).

G2. The Commission may grant a hardship exemption to a POCB. The Commission finds that the applicant has demonstrated the need within and the benefit to the community and the difficulty full compliance with the Minimum Performance Standards (MPS) would entail.

G3. WHAT is a professional non-profit theater. The slow economy and other related factors have impacted its capital funds. The applicant would suffer financial hardship if required to comply with all of the transportation requirements of the RPP, as discussed below. Further off-sets of funds would adversely impact the viability of the proposed new theater including the artistic development and educational opportunities it proposes to provide.

Transportation

T1. The proposed theater consists of a 190± seat indoor theater (the main performance area) and a 60± seat outdoor summer theater tent. The maximum seating capacity for the entire theater is 250

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seats, allocated between the main performance area and the summer theater tent. According to the applicant's traffic study, the theater is expected to generate 276 daily and 125 peak hour trips on days with a single full theater performance at each venue. On days with additional performances, such as matinees, the theater is expected to generate additional traffic in direct proportion to the increase in patrons at these performances. To limit traffic generation impacts on adjacent roadways, the applicant proposes to limit the number of performances, times of performances, and total patrons. In particular, performances will be restricted during peak traffic periods.

T2. The applicant's crash analysis does not cover all review locations required under MPS 4.1.1.2. Its traffic study states that crash rates for five local intersections, including the site driveway have not exceeded the statewide average, and as such do not necessitate submission of crash diagrams for safety analyses. As allowed under the hardship exemption regulations, the Commission determines that the applicant would suffer hardship if required to comply fully with MPS 4.1.1.2 and complete a full traffic study. The Commission thereby grants relief from the remainder of MPS 4.1.1.2.

T3. The project will generate new daily and peak hour traffic at an existing driveway on Route 6 in Wellfleet. MPS 4.1.1.4 does not allow new development direct access to Route 6 in Wellfleet unless no other access exists. The project has no other legal access and consequently complies with MPS 4.1.1. 4.

T4. MPS 4.1.1.5 requires lighting to minimize obstruction and glare for drivers. Current on-site lighting does not appear to cause glare for drivers on Route 6. All signage will comply with Commission's *Exterior Lighting Design Standards, Technical Bulletin 95-001*, and in accordance with the lighting requirements, will not produce glare.

T5. MPS 4.1.1.6 requires site planning to minimize impact on adjacent roadways and to accommodate all users including pedestrians, bicyclists, and motorists. The project utilizes an existing driveway access. This entrance is usable for both vehicles and bicycles. The project does not provide for a separate pedestrian access. MPS 4.1.1.6 and MPS4.1.2.5 also require connections for pedestrians and bicyclists to adjacent properties where appropriate. The proposed project provides a connecting pedestrian path and driveway to the adjacent commercial plaza. The applicant has agreed to work with the state and town in developing a pedestrian/bicycle way along the frontage of the lot should the agencies decide to add a pathway along Route 6 in this area. The applicant will provide an easement for this use. If such a project moves forward, the applicant has also agreed to add a pedestrian / bicycle connection from this path to the theater/post office area.

T6. MPS 4.1.1.7 requires acceptable sight distances at all site driveways. Preliminary measurements have shown at least 645 feet of sight distance exists for the site driveway which is suitable to 65 mph per the American Association of State Highway Transportation Official's (AASHTO) safe stopping sight distances. Due to the layout of the site's southbound right turn lane and the main travel lanes of Route 6, the stop lines for the development are not located to provide sufficient sight distances for drivers leaving the site. The applicant has proposed to modify the pavement markings, traffic island, and signage at the site entrance to alleviate this problem. Plans will be submitted for Commission staff approval prior to the commencement of project construction and will be implemented prior to occupancy. The applicant will maintain

sufficient sight distances at the site driveway by maintaining/limiting vegetation on property under its control, by proper placements of signage and other obstructions, and by working with other agencies to maintain vegetation on property not under the applicant's control.

T7. MPS 4.1.1.9 requires site driveway width not to exceed state standards. The existing site exit drive is divided into two lanes, both of which meet the standard. The entrance drive is about three feet wider than the state standard. As allowed under the hardship exemption regulations, the Commission determines that the applicant would suffer hardship if required to comply fully with this standard and thereby grants relief from the remainder of this requirement, allowing the current driveway to stay in its current width.

T8. MPS 4.1.1.10 allows for consideration of trip generation data sources other than those from national surveys. In accordance with this standard, the project's trip generation was based on the number of theater seats, staff, performances, and estimated vehicle occupancy.

T9. MPS 4.1.2.1 requires all DRIs to reduce expected daily trips by 25%. The applicant has proposed a trip reduction program which includes discounting group ticket sales, providing alternative transportation literature, offering on-site services for employees including a small concession, and a bicycle rack. These techniques are estimated to fulfill about 40% of the trip reduction requirements. The applicant has also agreed to add transit/bus literature to its program should such service become available to the theater in the future. As allowed under the hardship exemption regulations, the Commission determines that the applicant would suffer hardship if required to comply fully with this standard and thereby grants relief from the remainder of MPS 4.1.2.1.

T10. MPS 4.1.2.3 allows for a reduction in estimated trip generation where a development connects to other developments. Although the project has access to the adjacent post office and neighboring retail plaza, few trips are expected to be eliminated due to the theater's hours of operation not corresponding with most of the hours of adjacent uses.

T11. MPS 4.1.2.6 requires parking not to exceed local requirements. The development meets the local parking requirements according to the applicant's analysis. However, based on the project's trip generation, the demand for parking may exceed the on-site parking availability. Theater patrons will likely use the large adjacent commercial parking area for overflow parking. Should this parking become unavailable to theater patrons in the future, the applicant has indicated an area on the theater site plan which can be used for additional parking if necessary.

T12. MPS 4.1.3.2 requires adequate level of service at new driveways and access points onto the regional roadway system. MPS 4.1.1.1 requires that development not degrade safety. Although the site driveway is not new, its level of service is expected to be very poor (F) during daytime and early evening hours for those leaving the theater making a left turn onto Route 6. The Wellfleet Police Chief has stated (in a letter to the Commission dated September 20, 2004), that he believes that traffic leaving the site should operate adequately and that the police department would monitor the situation. The applicant has agreed to arrange for officer control at the driveway if the Wellfleet Police Chief determines such control is necessary.

T13. MPS 4.1.3.4 requires mitigation of all development impacts on regional roadways. The project is expected to impact existing very poor traffic operations along Route 6 both inside and outside of Wellfleet. However, given the restrictions on the theater's expected trip generation (through limits on hours, performances, and capacity); its primary traffic impacts occurring outside of peak traffic times on Route 6; and the applicant's hardship in addressing all the mitigation requirements, the Commission grants relief from MPS 4.1.3.4.

Water Resources

WR1. The project is located in a Marine Water Recharge Area, as defined under MPS 2.1.1.2.C. The watershed discharges to Wellfleet Harbor. A critical nitrogen load has not been established for Wellfleet Harbor. Therefore, the nitrogen loading limitations under MPS 2.1.1.2.C do not apply to this project.

WR2. The project is not located in a Wellhead Protection Area, as defined under MPS 2.1.1.2.A.

WR3. The project is required to meet the regional 5-parts per million (ppm) nitrogen-loading standard as set forth under MPS 2.1.1.1. Based on nitrogen sources as identified in Findings WR4, WR5 and WR8, the project's nitrogen loading to groundwater is 4.9 ppm.

WR4. The project includes the addition of 4,860 s.f. of impervious pavement to the project site, for a total of 47,378 s.f. of impervious paving, as reflected in the applicant's nitrogen-loading calculations. DRIs are required to meet MPS 2.1.3 for managing stormwater runoff.

WR5. The applicant calculated the project's nitrogen loading (including both the existing and proposed development on the parcel) at 5 ppm based on Title-5 wastewater flows of 1,200 gallons per day (gpd), prorated to 1,030 gpd to reflect the seasonal nature of the theater and without regard to 3,600 s.f. of proposed lawn as shown in project plans. According to the applicant's calculations, the establishment of a lawn and generation of assumed wastewater flows for more than 6 days per week would result in the project's exceeding the 5-ppm nitrogen-loading standard.

The applicant's methodology assigns separate wastewater flows each for the existing WHAT offices and the proposed theater. In its DRI review of the Boch Center, however, the Commission did not assign separate flows for each use and found it appropriate that wastewater flows prescribed by Title 5 for theaters (at 3 gpd per seat) would account for all theater functions (including theater administration and support offices). Using the methodology applied to the Boch Center, total Title-5 wastewater flows for all proposed uses on the project parcel would total 990 gallons per day. These wastewater flows include 240 gallons per day for the post office and 750 gpd for all theater functions (including the offices), based on the theater's proposed seating capacity of 250 seats.

WR6. MPS 2.1.1.3 requires DRIs to site septic systems such that they avoid contamination of existing and proposed water-supply wells. Wastewater for existing development on the project parcel is currently managed and disposed of on site using a standard Title-5 septic system located near the western, downgradient property boundary as shown in plans EP-1, DP-1 and LL-1, dated July 2, 2004. The applicant has indicated the intent to install a second standard Title-5 septic

system to manage wastewater from the proposed theater. Project plans do not describe the design or location of the proposed septic system.

The applicant will seek a permit from MADEP for development of a small-volume public water-supply well to provide 1,200 gpd of water to all development on the parcel. This well is proposed to be located near the eastern, upgradient property boundary as described on plans DP-1 and LL-1. The proposed well would replace the existing water-supply well. In addition to the proposed well, a private residential well serving the western abutting parcel (map 23/parcel 209.1) is located approximately 200 feet downgradient of the existing septic system, and a small-volume public water-supply well located on the northern abutting parcel services the retail plaza located on that parcel. The abutters' wells are not shown on project plans. Relocation of the existing wastewater leachfield may be necessary to avoid impacts to the downgradient residential well from the added discharge to the existing leachfield.

WR7. Based on staff discussions with the Wellfleet Health Department, the existing septic system has a permitted capacity of 1,160 gallons per day. Based on this capacity and Title-5 flows described in Finding WR5, the existing septic system is adequately sized to handle all wastewater flows from the project and existing development.

WR8. Project nitrogen loading cited in Finding WR3 reflects nitrogen from fertilizer applications to approximately 3,600 square feet of lawn and described in referenced project plan DP-1. The parcel currently is predominantly covered by natural vegetation. The project's nitrogen-loading could exceed the 5-ppm standard with development of a lawn larger than that proposed in project plans or with intensification of landscaping.

Community Character/Heritage Preservation

CC1. The proposed building design is consistent with RPP minimum performance standards for the design of new structures. MPS 6.2.5 requires any individual structure with a footprint over 10,000 s.f. to have variation in massing, facades, and roof configuration to reduce the apparent scale of the building. While the proposed project is slightly less than 10,000 square feet in footprint, it incorporates variation in all these features, creating small masses that reflect the different components of the theater building. The proposed building design successfully combines contemporary design elements with simple building forms and materials traditional to the region.

CC2. The applicant has confirmed in a memo dated 9/22/04 that there will be no internally illuminated signage on the site.

CC3. The applicant has stated in a memo dated 9/22/04 that the project will have a landscape plan prepared along with project construction documents to address issues such as drainage and erosion control.

CC4. The proposed project is located outside of any local or National Register historic districts and no historic structures are located on the project site. Massachusetts Historical Commission (MHC) staff signed off on the proposed project on June 29, 2004, stating that it is unlikely to affect significant historic or archaeological resources.

CC5. MPS 6.2.10 requires that *exterior lighting in new development or redevelopment shall comply with [the] Exterior Lighting Design Standards, Technical Bulletin 95-001*. Information submitted from Platt Anderson Freeman dated September 21, 2004 indicates the project will involve bollards, down-directed accent lights, on-building round accent lights, and wedge scone wall-packs as shown on a site lighting and landscape plan (LL-1 dated September 22, 2004). Technical cuts dated September 21, 2004 indicate the proposed down-lights will be high output fluorescents on a swivel pivot mount. This mounting is not consistent with MPS 6.2.10, Technical Bulletin 95-001 because the fixture can be rotated in the field to create an up-light. The bollards and wedge scone wall-packs lights are proposed to be metal halide. No lamping information was provided for the on-building round accent lights. The bollards, wedge wall-packs and round on-building accent lights appear to meet Technical Bulletin standards 2.3, 2.4 and part of 2.5 (bollard maximum height). The September 21, 2004 information indicates there are existing pole lights on site, but that budget constraints do not currently allow removal of existing pole lights and that the facility does not intend to add pole lights.

CC6. No information was submitted that indicates whether the new exterior lighting complies with the maximum foot-candle levels stipulated by MPS 6.2.10 and Technical Bulletin 95-001 standard 2.6.

Natural Resources/Open Space

NR/OS1. The project site is not located within a mapped Significant Natural Resources Area, nor are any wetlands located on the site.

NR/OS2. A significant portion of the site has been previously cleared and graded. The existing vegetation is primarily second growth scrub. Due to the amount of existing disturbance and development on the site, a natural resources inventory (NRI) was not required.

NR/OS3. As a DRI located outside of an SNRA, the project is required to permanently protect open space at a ratio of 1:1 development area to open space. The applicant's open space calculations show that the development area is 18,020 s.f. The applicant proposes to provide 18,270 s.f. of open space in the southeast corner of the site in the Route 6 buffer area and partially within the Zone I of the proposed on-site well. The applicant will preserve this area as open space through a restrictive covenant, and (according to the applicant's email dated August 16, 2004) will provide restrictive language in the condominium documents as well.

Hazardous Materials

HM1. According to maps produced for the 2002 RPP (as revised), the project site is not located within an existing or proposed Wellhead Protection District/Zone II or a Potential Public Water Supply Area (PPWSA). As such, MPS 4.3.1.3 (which limits the quantity of hazardous materials allowed on site) does not apply to this project

HM2. MPS 4.3.1.1, MPS 4.3.1.2 and MPS 4.3.1.4 require development and redevelopment to *make reasonable efforts to minimize their hazardous material use and/or waste generation*, to be

in compliance with the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000, and to prepare an emergency response plan.

HM3. Heavy equipment will be used for site preparation and project construction. The project's architects and construction management firm submitted a plan that addresses hazardous materials and waste management during the construction phase.

HM4. Two 1,000 gallon propane gas tanks will be installed on site to supply the facility's mechanical systems. An oil-fuel fired emergency generator will also be installed on site. (Information regarding the size of the tank for this generator has not been provided.) The facility will generate used fluorescent tubes, a regulated waste in Massachusetts. Hazardous materials and wastes might also be used in and generated by scene shop activities. No information was provided either to identify what hazardous materials and wastes the theater facility might use or generate, or to address MPS 4.3.1.1-MPS 4.3.1.4.

Noise

N1. MPS 2.6.1.1. requires that projects *shall be in compliance with...DEP's Air Pollution Control Regulations*. Under state regulations, noise is considered to be an air contaminant. Sources of noise include construction equipment (for the site preparation and construction phases) and roof-top mechanical devices (fans, heating/air cooling equipment). The Commission finds it appropriate to relieve the project from the requirement to conduct a sound study relative to MPS 6.2.1.1.

Economic Development

ED 1. The relocation and expansion of the proposed WHAT theater is consistent with Goal 3.1 of the MPS to "*encourage businesses that are compatible with Cape Cod's environmental, cultural, and economic strengths in order to ensure balanced economic development.*" The theater is one of an emerging cluster of progressive professional theaters on the Cape and, as such, is an important element of the Cape's "creative economy."

ED 2. The applicant has provided economic data indicating that the proposed project would double the theater's current payroll and increase its current services to serve the community year-round. The data provided does not indicate what the net job creation would be as a result of this growth but does indicate that existing jobs would change from seasonal to full-time year-round positions.

WHAT Projected Net Payroll increase: \$213,573

	Current	Projected	<u>Net Increase</u>
Contract Employment	\$99,888	\$205,350	\$105,462
Salaried Employment	\$167,889	\$276,000	\$108,111
TOTAL	\$267,777	\$481,350	\$213,573

ED 3. The applicant notes the following benefits associated with its expansion to a full-time theater (in addition to the employment benefits noted above):

1. With no other year-round performing arts centers nearby, WHAT will be providing a needed service to the community
2. WHAT classes will supplement school art programs in the area that are increasingly at risk of being cut from the curriculum
3. The summertime “WHAT for Kids” program started in 2002 in collaboration with the Wellfleet Recreation Department will be expanded
4. WHAT’s current space limits the benefits of the theater because it is not large enough to meet current audience demand, cannot be used on a year-round basis, and, due to its size, restricts creativity.
5. While WHAT’s current space is leased (creating an uncertain future for the theater), the new building would be owned by WHAT.

ED 4. Given that the theater is a non-profit entity, no new tax revenues would be expected from this project. A full analysis of the fiscal impact of the project would require substantially more information and research.

ED 5. The location of the proposed project consistent with Goal 3.2 *“to locate development so as to preserve the Cape’s environment and cultural heritage, minimize adverse impacts, and enhance the quality of life.”* While this project would move the theater out of the downtown and busy harbor area to a site along Route 6 (due to existing space limitations) the proposed new site has been previously disturbed and currently is a community gathering spot as it already houses the post office. The applicant sites the following factors as enhancements to quality of life in the area:

1. Redevelopment of a previously disturbed area.
2. Enhances cultural offerings to year-round residents:
 - Programs for seniors, matinee performances;
 - Discounted prices for Wellfleet voters.
3. Enhances existing community gathering place:
 - Seating, encourages lingering and conversation;
 - Concessions;
 - Outdoor events during the day.

ED 6. The expansion of WHAT theater from a seasonal to a year-round theater is consistent with Goal 3.3 *“to encourage the creation and diversification of year-round employment opportunities.”* Arts and culture constitute an important niche in the regional economy, both in terms of employment and as an attraction to bring visitors and economic vitality into the region. The applicant notes the following advantages of a year-round theater on the Outer Cape:

1. Extend tourist season.
2. Increase opportunities for local performing artists.
3. Double the number of apprenticeships with stipends.
4. Increase opportunities for ancillary services such as cleaning, electrical, plumbing, and other trades.
5. Provide educational programs the existing seasonal venue is not able to offer.

CONCLUSION

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

The applicant demonstrated that the proposed project is a Project of Community Benefit as defined under section 1(c) of the DRI Enabling Regulations, as noted in Findings G1- G3. The applicant has a hardship, as noted in Findings G2, T2, and T9. 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, and the Commission grants the minimum relief necessary to address the hardship.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of the Wellfleet Harbor Actors Theater pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the Wellfleet Harbor Actors Theater project located in Wellfleet, MA., provided the following conditions are met:

CONDITIONS

General

G1. This Project of Community Benefit DRI hardship exemption decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

G2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

G3. The applicant shall obtain all state and local permits for the proposed project.

G4. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G5. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the Wellfleet Zoning Board of Appeals shall be submitted to the Commission upon receipt of local approvals.

G6. Prior to issuance of a building permit for any phase of construction, the applicant shall obtain a Preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of a building permit for such phase have been met.

G7. The proposed WHAT Theater shall be constructed in accordance with the following final plans:

- Development & Locus Plans DP-1, prepared by Platt Anderson Freeman dated 7/2/04
- Existing Conditions Plans EP-1, prepared by Platt Anderson Freeman dated 7/2/04

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- Landscape & Site Lighting plans LL-1, prepared by Platt Anderson Freeman dated 9/21/04
- Building Plans A1-1, A1-2; A2-1—A2-4, prepared by Platt Anderson Freeman dated 8/4/04.

G8. Prior to receiving a temporary or final Certificate of Occupancy from the Town of Wellfleet, the applicant shall obtain a Final Certificate of Compliance from the Commission.

G9. The project shall not be open for business to the public until a Final Certificate of Compliance is received from the Cape Cod Commission.

G10. The applicant shall notify Commission staff of the intent to seek a Preliminary or Final Certificate of Compliance at least thirty (30) days to the anticipated date of receipt of such Certificate. 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 Final 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.

G11. The applicant shall be responsible for providing proof of recording of the decision prior to issuance of a Final Certificate of Compliance.

G12. The applicant shall demonstrate that a copy of this decision has been provided to the general contractor prior to the start of construction.

Transportation

T1. The theater shall be limited to a total of 250 seats. The seats may be allocated among the main theater and a summer theater tent.

T2. Theater performances shall be limited to reduce impacts on regional roadways. For purposes of this finding, a "performance" shall be defined as a scheduled theatrical, musical, cinematic, or other event where the general public is invited and which may fill either the main theater or summer "tent" theater. The performances shall be limited as follows:

In-Season period (May 1 to September 30):

Maximum number of total people at performances in a single day: 500

Maximum number of main theater performances in a single week: 8

Maximum number of summer "tent" theater performances in a single week: 8

Maximum number of evening main theater performances in a single week: 7
Maximum number of evening summer “tent” theater performances in a single week: 7
Evening performances shall not begin before 7:00 pm.

Maximum number of matinee performances per week: 2 (including both venues)

No more than one Saturday matinee performance per four week period.
Start times for weekday and Saturday matinee performances shall be between 1:00pm and 3:00 pm.
Start time for Sunday matinee performances shall be 4:00pm or later.

Off-Season period (Oct 1 to April 30):

Maximum number of total people at performances in a single day: 500
Maximum number of evening main theater performances in a single week: 8
Evening performances shall not begin before 5:00 pm.
Maximum number of matinee performances per week: 3

T3. The applicant shall construct and maintain a walkway leading from the adjacent commercial area to the theater building as noted on plan DP-1 and labeled “New Gravel Path to Connect to Parking Area of Adjacent Property to North.”

T4. The applicant shall provide an easement along the Route 6 frontage of the site for a bicycle/pedestrian path should the state or town build such a path in the future. If such a path is built, the applicant shall provide a bicycle/pedestrian pathway from the Route 6 path to the theater buildings.

T5. The applicant shall redesign the site entrance to achieve required sight distances in accordance with American Association of State Highway Transportation Official’s guidelines regarding safe stopping sight distance. Design plans shall be submitted and reviewed for approval by Commission transportation staff prior to the issuance of the Preliminary Certificate of Compliance. Implementation of the entrance redesign shall be completed prior to the issuance of the Final Certificate of Compliance.

T6. The applicant shall maintain sight distances at the site entrance in accordance with American Association of State Highway Transportation Official’s guidelines regarding safe stopping sight distance by maintaining / limiting vegetation on property under its control, by proper placement of signage and other obstructions, and by working with other agencies/landowners to maintain vegetation on property not under the applicant’s control. Prior to issuance of the final certificate of compliance, the applicant shall submit a letter signed and sealed by a Massachusetts registered Professional Civil Engineer verifying that the actual sight distances meet these requirements.

T7. The applicant shall implement a trip reduction plan that includes the following:

- On site concession for employees and patrons;
- Inside eating area including a refrigerator and microwave for employees;
- Group discount ticketing plan;
- Bicycle rack

- Sending alternative transportation information including van and carpooling to all patron groups using the discount plan
- Adding bus transit information to the alternative transportation information should such service become available at the theater site.

Materials for the trip reduction plan shall be submitted and approved by the Commission staff prior to issuance of a Final certificate of compliance.

T8. The applicant shall hold in reserve the land noted as “Reserve Landscape for Potential Future Parking” as shown on plan RL-1 by Platt Anderson Freeman Associated Architects dated September 22, 2004 for use as parking spaces, should overflow parking not be accommodated off-site.

T9. The applicant shall provide for officer operational control at the site driveway when the Wellfleet Police Chief determines such control is necessary. The Wellfleet Police Chief or his designee shall have sole discretionary authority to determine when such control is necessary.

Water Resources

WR1. To ensure compliance with MPS 2.1.1.1, total wastewater flows for development on the parcel shall not exceed 0.361 mgd (990 gpd x 365 days) for any consecutive 12 month period. Wastewater flows shall be estimated from the rate of water supplied to development on the parcel. The water supply shall be metered and verification of meter calibration shall be submitted to the Commission prior to issuance of the Final Certificate of Compliance. The meter shall be read and recorded upon the building’s occupancy and each month thereafter. The meter shall be calibrated annually following the first calibration.

For a minimum period of 5 years commencing with the first meter reading, water use shall be reported to the Commission within 30 days of the end of each consecutive one-year period. Reporting shall include 1) a totaled monthly breakdown of water volume used by development on the parcel; 2) a copy of meter readings recorded on site; 3) the number of ticket sales corresponding to the reported water use; and 4) documentation of meter calibration.

WR2. If water use by development on the parcel exceeds 0.361 million gallons for any year within the reporting period, the project shall provide DEP-approved innovative/alternative wastewater technology with a denitrifying capability to treat all wastewater generated by development on the parcel. Within one (1) month of exceeding this limit, the applicant shall meet with Commission staff and present plans for meeting this requirement. Within three (3) months of the exceeding the limit, the applicant shall have complied with all provisions of this condition.

WR3. To meet MPS 2.1.1.3, the project shall seek local approval to aggregate project wastewater flows with wastewater flows from existing development on the parcel and use available capacity of the existing septic system to manage all project wastewater, as described in Findings WR5, WR6 and WR7. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall provide to Commission staff documentation of such approval from the Wellfleet Board of Health.

WR4. If local approval cannot be obtained for satisfaction of condition WR3, prior to issuance of a Preliminary Certificate of Compliance, the applicant shall submit to Commission staff design and siting plans for a new septic system consistent with MPS 2.1.1.3 and with MADEP requirements for protection of the proposed water supply, as demonstrated by submittal of the MADEP approved final permit for the proposed public water-supply well. In addition, the plans should describe the location of the existing water-supply well for the retail plaza referenced in Finding WR6 and any other water-supply wells located within 400 feet of the project as required by MPS 2.1.1.3.

WR5. Prior to the issuance of a Preliminary Certificate of Compliance the applicant shall provide an operation and maintenance plan for managing stormwater runoff consistent with MPS 2.1.3 and approved by Commission staff. Impervious paved surface at the site shall be limited to 47,376 s.f. as identified in nitrogen loading calculations submitted to the Commission by the applicant and cited in finding WR4.

WR6. To ensure compliance with MPS 2.1.1.1, the project parcel shall remain in its naturally-vegetated state as shown on project plan DP-1. Lawn established by the project shall be limited to 3,600 square feet in the area described in project plan DP-1 as “*Proposed Lawn Drought Resistant Seed Mix*” and in project plan LL-1 as “*Proposed Courtyard.*”

Community Character/Heritage Preservation

CC1. The building shall be constructed as shown on plans and elevation drawings prepared by Freeman Platt Anderson Architects, dated 8/4/04, sheets # A1-1 through A1-2 and A2-1 through A2-4. Exterior building materials shall be as specified on the elevation drawings. Any changes to the plans shall be submitted to Commission staff for review for consistency with RPP Minimum Performance Standards.

CC2. A landscape plan shall be prepared in conjunction with construction documents and shall be submitted to Commission staff for review and approval prior to issuance of the Preliminary Certificate of Compliance.

CC3. The project shall not include any internally illuminated signage on-site.

CC4. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall submit “as to be installed” exterior lighting information. This information shall conform to Technical Bulletin 95-001, including, if necessary, submission of a point-to-point foot-candle plan.

CC5. Should unexpected conditions arise during construction that require redesign or adjustments to site exterior lighting provided in the information submitted in accordance with condition CC4 the applicant shall obtain approval from Commission staff prior to the installation of such fixtures. Modifications made to the exterior lighting design that are in accordance with Technical Bulletin 95-001 may be approved by Commission staff.

CC6. Prior to issuance of a Final Certificate of Compliance from the Commission, in-the-field verification of light levels shall be conducted by Commission staff to verify conformance with the requirements of the 2002 RPP and Technical Bulletin 95-001.

Natural Resources/Open Space

NR/OS1. In accordance with NR/OS Finding 3, prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall record a restrictive covenant to protect 18,020 s.f. of open space as shown on Development and Locus Plan DP-1 dated 7/2/04. The form and content of the restrictive covenant shall be approved by Commission staff prior to recording. The restrictive covenant shall also be adopted as part of the condominium documents prior to the issuance of a Preliminary Certificate of Compliance.

Hazardous Materials

HM1. On-site servicing of all construction equipment shall be limited to lubrication of fittings and joints. Any on-site fuelling shall be conducted in a designated location and on an impervious surface. The on-site construction management firm shall implement a plan consistent with the Hazard Communications Policy attached to a September 21, 2004 memo from the project architect.

HM2. Prior to issuance of a Final Certificate of Compliance, the applicant shall provide to Commission staff evidence of a contract with a licensed, permitted fluorescent bulbs recycler.

HM3. Prior to issuance of a Final Certificate of Compliance, Commission staff shall inspect the project site for consistency with the above findings and with MPS 4.3.1.1, 4.3.1.2 and 4.3.1.4. Based on the findings of this inspection, staff may require the applicant to provide the Commission with evidence that the facility has implemented a hazardous materials source reduction program; that it has notified the Massachusetts Department of Environmental Protection as a generator of hazardous waste, and that it has a contract with a licensed, permitted hazardous waste management company.

Noise

N1. The project's construction phase shall incorporate site preparation and construction noise attenuation measures as outlined in a September 21, 2004 memo from the project architects and Chapman Construction. The project's physical and mechanical systems shall also incorporate sound-attenuation measures as outlined in the September 21, 2004 memo, including but not limited to location of equipment on-site and the use of low-speed fans, silencers or baffles.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of the Wellfleet Harbor Actors Theater pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the Wellfleet Harbor Actors Theater project located in Wellfleet, MA

David J. Ansel, Chair

Date

Commonwealth of Massachusetts
County of Barnstable

On this _____ of November, 2004, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

Notary Public
Commonwealth of Massachusetts

My Commission Expires: _____