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September 19, 2019

Jonathon Idman  
Chief Regulatory Officer  
Cape Cod Commission  
3225 Main Street, P.O. Box 226  
Barnstable, Massachusetts 02630

RE: The Hyannisport Club – Proposed Building Demolition  
2 Irving Avenue, Hyannis Port  
CCC File No. 19023

Dear Mr. Idman,

I am writing on behalf of The Hyannisport Club, Inc. in connection with the limited discretionary referral of the proposed demolition of the Hezekiah Marchant house located on Marchant Mill Avenue in the Village of Hyannis Port. A similar referral was made to the Cape Cod Commission in 2009. At that hearing, the Commission voted to accept the referral based upon its determination that the house had lost its status as a single family home and had been converted to an accessory structure. For the reasons stated hereafter, this conclusion is erroneous as a matter of law.

By way of background, the a portion of the Hezekiah Marchant house was constructed in around 1754 and used initially as a single family residence by the Marchant family. Additions to the home included a kitchen and a wing, both constructed around 1910. The property was used by the Stimpson family on a year-round basis starting the 1970's. Mr. Stimpson was the teaching tennis professional of Hyannisport Club for many years.

From the late 1970's until the early 2000's, the house has been used seasonally by the family of the tennis professional working at the Club for that particular year. The use of the building has always been that of a single family residence. The fact that the Club has made use of the home to house its seasonal tennis club professional and his family does not change the status of the house to that of an accessory use. No such determination has been made by the Barnstable Town Building Commissioner, the Town's zoning determination and enforcement officer, or the Barnstable Zoning Board of Appeals, the Town's board determinative body

regarding special permits, variances and the review of the Building Commissioner's decisions.

The Hezekiah Marchant home has never been used as an office or as a multiple family dwelling. The property is located on a 156 acre parcel of land in the RB and RF-1 zoning districts. The golf course is an allowed use. However, Chapter 2440-11 specifically limits the operation of a private golf course as follows:

C.

Conditional uses. The following uses are permitted as conditional uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:

(1)

Renting of rooms to no more than six lodgers in one multiple-unit dwelling.

(2)

*Public or private regulation golf courses subject to the following:*

(a)

*A minimum length of 1,000 yards is provided for a nine-hole course and 2,000 yards for an eighteen-hole course.*

(b)

*No accessory buildings are located on the premises except those for storage of golf course maintenance equipment and materials, golf carts, a pro shop for the sale of golf related articles, rest rooms, shower facilities and locker rooms.*

Even if the Town of Barnstable, as it asserted at the hearing in 2009, asserts that the house is now a pre-existing, non-conforming accessory structure, the Hyannisport Club has the absolute right to change that use to a principal permitted use as of right as per Chapter 240-94 Nonconforming use: alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood.

§ 240-94 Nonconforming use.

[Amended 3-11-1999 by Order No. 99-056]

A preexisting nonconforming use shall be limited in the extent it may expand or intensify. A preexisting nonconforming use may be changed to a principal permitted use as of right.

Single family residence is an allowed principal use in both the RB and the RF-1 district and the Hyannisport Club exercises its right to treat the Hezekiah Marchant house as a single family residence. As such, the Cape Cod Commission by its own regulations, cannot accept the limited discretionary referral. The Cape Cod Commission Act under Section 2(b)(ii) of the Enabling Regulations provides that single family dwellings shall not be considered to have significant impacts on the values and purposes protected by the act.

The Hezekiah Marchant house has been vacant for many years and the Hyannisport Club has no plans to spend the estimated \$1 Million+ to rehabilitate the structure or to use the building for any purpose. Respectfully, I will be asking the Commission to reject this limited discretionary referral so that the matter can be address by the Barnstable Historical Commission.

Thank you for your kind attention to this matter.

Sincerely,



Mark H. Boudreau

MHB