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Harwich Board of Appeals

2173 Rt. 28, East Harwich

SUMMARY OF REASONING

Introduction. Round Cove Resort Owners LLC [“Applicant”] is the owner of the Wequassett Resort and Golf Club (“Resort”) located at 2173 Rt. 28 in East Harwich. The proposed project is located at 2173 Route 28 and, in a more limited fashion, at an adjacent property, 4 Cove Landing Road, which will be merged by 81X plan with the 2173 Rt. 28 and 2 Swan Drive parcels shortly (collectively, the “Property”). The Property, which is shown as Parcels S1-30, R-2, H5-2 on Harwich Assessors Map 115, is located in the RH-2 Zoning District and contains over 22 acres of land.

The Property’s primary use, hotel and motel use, is currently allowed in the RH-2 Zoning District by special permit. The Resort has provided lodging for guests and associated services on a grandfathered basis for decades. The Property is developed and includes the following: 35 buildings (sheds included), outdoor landscaped event space, two pools, four tennis courts, building decks, parking lots, dry-laid brick walkways, a playground, gravel storage areas, revetment, utilities and wastewater treatment facilities. (See plan titled “Existing Conditions Plan” dated 01-19-23 for Round Cove Resort Owner LLC, prepared by Coastal Engineering Co., Inc.).

Proposed Project: As part of its effort to enhance the Property, the Applicant proposes to raze the three existing one-story buildings facing Round Cove and to replace them with three two-story structures (Buildings 1, 2, and 11 existing and Buildings A, B, and K as proposed). In addition, the proposed work

would improve both hardscape and landscaping adjacent to the affected buildings on Round Cove, and alter and improve the parking area adjacent to Rose Cottage (Building #20) north of proposed replacement Buildings A and B. The proposed work will take place within previously developed areas and limited to the areas surrounding Buildings A, B, and K as proposed.

The work as proposed is conforming as to setbacks.¹ Likewise, building coverage is conforming (8.1 % existing; 8.4 % proposed; 30% maximum coverage allowed) as is site coverage (32.1% existing; 32.4% proposed; 35% maximum coverage allowed). Combined total floor area for the three buildings involved in this project will increase from 6,749 sq. feet to 16,416 sq. feet for a net increase of 9,667 sq. feet of interior floor area. No pre-existing nonconformities will be altered by the proposed work, with the exception of the minor increase in pre-existing nonconforming amenities coverage, and no new nonconformities will be created by the proposed work.(See following paragraphs re amenities coverage.)

The existing hotel use for the structures will remain unchanged, but the total number of guest rooms will increase by twelve units (four new second floor guest units per building for a total of twelve new units including one ADA compliant unit in each of the proposed new structures.) (121 existing units, 133 units proposed). The Resort's use is grandfathered, as it existed prior to the requirement of a special permit and has been continuously in operation.

Section 325-18E provides that on "lots used for hotel or motel purposes, parking lots, roads, streets, tennis courts, swimming pools and like amenities and facilities shall not cover more than 15% of the area of the lot." The section further provides that amenities which do not cover the ground with impervious material are not included as total ground site coverage for a lot. As the Resort's many pathways are pervious dry-laid brick, they have historically been counted as amenities coverage rather than as site coverage. The Property's amenities coverage is pre-existing nonconforming and will increase less than one tenth of one percent. (Amenities coverage: 23.9%, 231,194 s.f. existing; 24.0%, 232,042 s.f. proposed; 15%, 144,915 s.f. maximum allowed). The goals of pulling existing hardscape including

¹ An east-side setback adjacent to 4 Cove Landing Road (now merged with the Property and requiring a more significant 50 foot setback) is nonconforming as proposed but is outside of the work area. Likewise, a north-side setback (Building 14) is nonconforming as noted in the Zoning Table.

pathways away from the resource area, providing code-compliant handicapped parking path access to proposed units, and providing outdoor patios comparable to those provided to the adjacent signature suites hotel units result in an increase in amenities coverage of less than nine hundred square feet.

A focus of the redevelopment, as advised by Town Staff when initially discussed, was pulling the proposed structures and hardscapes away from the coastal back and, to the extent possible, further inward from the more critical 0-50 resource area. The Conservation Commission reviewed the notice of intent and stormwater design and unanimously approved the plans as proposed. The plan as proposed has been reviewed by Town Staff and the Town Planner, Mr. Halkiotis, issued a report recommending that the Planning Board approve the project. The Planning Board continued the first meeting to attend a site visit and will meet to discuss the project at a hearing on April 25, 2023, the day prior to this Board's hearing. The Applicant has not sought exemptions from the Planning Board – as the work on the plan as proposed is conforming to all setbacks, site and building coverage, parking, lighting, and height.

Abutters to the project, the Sheltons of 2 Cove Landing, have opposed the project in the Planning Board review, citing noise, light and privacy and have requested a superseding order in regards to the Conservation Commission's Order of Conditions. There are no view easements over Resort property. The Applicant through counsel has attempted to engage the Sheltons to provide feedback regarding type of trees, placement of trees, size of trees and number of trees for screening but the Sheltons confirmed through counsel that they have no interest in discussing screening at this time.

Relief Requested: The Applicants are seeking a Special Permit from the Zoning Board of Appeals under Section 325-254 and Chapter 40A, Section 6 to both alter pre-existing nonconforming amenities coverage under Section 325-9 and to extend and alter a pre-existing nonconforming use. The Harwich Zoning By-Law provides that a lawfully pre-existing structure, whether conforming or not, used for a lawfully nonconforming use may, by special permit, be changed, altered, or razed and replaced with a new structure on the same site, provided the Board of Appeals determines that the proposal will not be substantially more detrimental to the neighborhood than the existing structure; that it will not cause or

contribute to any undue nuisance, hazard or congestion in the neighborhood, the relevant Zoning Districts or the Town; and that the structure will be used for the same use as existing or for a conforming use.

The Petitioner respectfully submits that the desired relief can be granted in accordance with all of the above-referenced special permit criteria and will not be substantially more detrimental than the existing conditions because:

1. There will be no change in the existing hotel/motel use at the Property;
2. The proposed work will conform to the dimensional requirements of the Zoning By-Law;
3. Building coverage will remain conforming and significantly under the maximum allowed (8.4 ±% proposed where 30% allowed);
4. Site coverage will remain conforming (32.4% proposed where 35% allowed);
5. Pre-existing nonconforming amenities coverage will minimally increase from 23.9% to 24.0 % where 15% is allowed. The increases in terms of additional walkways to access the proposed structures, and in particular, the ADA compliant rooms will be of benefit to the community and the Town. The closest in terms of distance of newly proposed amenities coverage (the pathways north of proposed Buildings A and B) will be no closer than 25 feet from the closest 2 Cove Landing property bound and will not be visible from the 2 Cove Landing abutter's home (which is more than 167 feet away from Building A and more than 145 feet away from Building B). Nor is it anticipated that the paths will be visible from the rear yard of 2 Cove Landing, given the more than eight-foot drop in elevation from the 2 Cove Landing property to lower proposed paths serving Buildings A and B. Further, the entire hillside between Buildings A and B and 2 Cove Landing acts as both a shield from ground level patios (also amenities) as well the majority of the pathways closest to the abutter's property bound;
6. The Harwich Conservation Commission unanimously approved the proposed redevelopment as being better protective of the environment than the pre-existing conditions. Each of the three replacement hotel structures will be moved back from the

coastal bank resource area; resulting in a reduction of over 1,500 sf of building area in the 0-50 buffer and the addition of over 4,800 s.f. in mitigation. Pathways near Building K which are close to the resource area and steeply sloped will be removed and pulled back from the coastal bank so as to be safer to navigate and to have less impact on the resource area. Plantings throughout the project's area will be enhanced with a particular emphasis on increasing naturalized areas within the 0-50 foot buffer zone, resulting in environmental benefits;

7. Maximum building height in the RH-2 Zoning District is thirty feet. As shown on the submitted elevation plans, the proposed hotel structures will be a conforming two stories and height (29.4 feet);
8. Run-off is anticipated to be in the form of roof drainage and such drainage will be collected and treated on site. No adverse impacts to surface water quality or groundwater quality are anticipated;
9. The proposed re-development project includes stormwater management BMP's to manage and recharge/infiltrate stormwater runoff onsite from the roofs of the proposed buildings and hardscapes. Proposed roof runoff will be collected and treated using infiltration basins that are sized for a 100-year 24-hour storm event. Hardscape runoff will also be treated using infiltration basins that are sized for a 100-year, 24-hour storm event. By infiltrating for the 100-year storm event, the proposed work will reduce the potential of erosion to the coastal bank by stormwater runoff significantly;
10. All of the redevelopment will be connected to the existing onsite Wastewater Treatment Facility. This Facility is governed by a Groundwater Discharge Permit issued by the Massachusetts Department of Environmental Protection;
11. Utilities serve the site and will not change;
12. A detailed landscape plan program is proposed for the proposed work; In response to concern from residents of 2 Cove Landing, which abuts the Property adjacent to the

proposed construction of Buildings A and B, a second, even more robust landscape plan has been proposed and filed with the Planning Board, this Board and with the abutters. The plan provides for a fully screened buffer between the proposed structures and the abutter's rear yard. Trees, some in excess of 14-16 feet will be provided, and planted at an elevation equal to the abutter's rear yard; providing robust screening immediately and with screening capacity increasing over time;

13. No negative change is anticipated in artificial light, noise, litter, and odor. A lighting plan and cut sheets have been provided. All lighting will comply with the Harwich lighting regulations and will be dark-sky compliant. Specifically, in response to concerns regarding light from the rear-facing second floors of Buildings A and B, the Applicant has agreed to install exterior lighting on the upper rear-facing decks of Buildings A and B, which is controlled by motion sensors to limit use. In addition, the Applicant points to the Resort's nightly turn-down service for all hotel guests. Each night, the window treatments for each room, whether black-out drapes and/or plantation shutters, will be closed. On the rear-facing second floor rooms for buildings A and B, the black-out drapes will expressly be drawn over rear-facing doors and windows;
14. The hotel/motel resort use is a use allowed by special permit in this zoning district and the Resort's use has been longstanding and grandfathered. The Resort has compatible interest with neighbors and its guests in insuring that noise is not unreasonably disruptive. But, in practice, and in context, some level of sound generated by neighbors and guests is to be expected, considered and not actionable. Care has been taken by the Resort to follow the guidelines of the Harwich Noise by-law which applies to organized events and the Resort restaurant, the Atlantic and organized events such as weddings or receptions. The Sheltons and the Resort have had an amicable relationship concerning noise in the past;

15. A Resort noise policy addresses noise complaints on site. The Resort monitors guest activity on site and responds to noise which might bother other guests or neighbors and also swiftly responds to guest's complaints. It's believed that in most cases, guest activities would be noted and addressed by the Resort before the activity rises to the level that it would bother abutters because fellow guests are far more proximate to each other on the Resort. At the Planning Board Hearing, Mrs. Shelton confirmed that she has never been bothered by noise from the current Buildings 1 and 2. She cited Rose Cottage guests as creating some unwelcome sound, mainly in the form of phone calls or conversations on the Rose Cottage rear deck (roughly 80 feet from the Shelton home) but had never made a noise complaint. Building A is more than double the distance to the Shelton's home than Rose Cottage is (+- 167 ft) and Building B is more than 145 feet from the Shelton's home. The four proposed upper rear units of Buildings A and B are significantly better screened than Rose Cottage and, as mentioned, further away;
16. The proposal has been designed to aesthetically complement the overall Property; and
17. The proposal will not adversely affect the public health, safety, convenience or general welfare of the Town. The redevelopment will not affect the flow of traffic on or off of the Resort. There will be no meaningful change in the operations of the Resort as a result of the addition of twelve guest units. Further the plan provides three fully modern ADA compliant units, two of which are water- facing and all access and handicapped parking within the zone of work is fully ADA compliant.

For all of the above reasons, the Petitioner respectfully requests that the Board make a determination that the proposal will not be substantially more detrimental to the neighborhood than the existing structure; that it will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, the relevant Zoning Districts or the Town; and grant a new Special Permit and make a Finding as requested above to allow the work to be completed as shown on the submitted plans.