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Harwich Board of Appeals

2173 Rt. 28, East Harwich

## **SUMMARY OF REASONING** **Harwich Zoning Board of Appeals**

**Introduction.** Round Cove Resort Owners LLC [“Applicant”] is the owner of the Wequasset 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, 4 Cove Landing Road, which has merged by 81X plan with the 2173 Rt. 28 and 2 Swan Drive parcels (collectively, the “Property”) (Recorded at the Barnstable Registry of Deeds as Plan Book 700, Pages 96-97). The Property, which is shown as Parcels S1-30, R-2, H5-2 on Harwich Assessors Map 115, is wholly located in the RH-2 Zoning District and contains over 22 acres of land.

The Property has two existing primary uses: a pre-existing nonconforming two-family residential use on what was 4 Cove Landing which will not be altered by the proposed work, and a hotel and motel use, which is currently allowed in the RH-2 Zoning District by special permit but is pre-existing nonconforming. 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 and patios, 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.). Building and site coverage are conforming and amenities coverage is pre-existing nonconforming.

Proposed Project: As part of its effort to enhance the Property and guests' five-star experiences, the Applicant proposes to raze three existing one-story buildings which are over fifty years old and to replace them with three two-story structures (Buildings 1, 2, and 11 existing and Buildings A, B, and K as proposed). The proposed work will improve both hardscaping and landscaping adjacent to the affected buildings on Round Cove and will alter and improve the parking area adjacent to Rose Cottage (Building #20), just north of proposed replacement Buildings A and B. The proposed work will take place within previously developed areas and is limited to the areas surrounding Buildings A, B, and K as proposed. A prior plan, in 2007-2008, to add a second story to both Buildings 1 and 2 (as proposed A and B), was approved by the Planning Board without objection from immediate neighbors.

#### Conforming as to Placement and Size and Height

The work as proposed is conforming as to setbacks.<sup>1</sup> 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) as proposed. Combined total floor area for the three buildings involved in this project will increase from 6,749 sq. feet to 16,416 s.f., resulting in a net increase of 9,667 square feet of interior floor area. Height is conforming at under 30 feet.

#### Effect on Neighborhood and Town

The total number of guest rooms on the Property 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). Eight of the twelve new units will be in Buildings A and B, abutting 2 Cove Landing. The eight abutter-facing outdoor areas (4 ground level patios built into and screened by the hillside and 4 upper decks fully screened by the proposed landscaping) are of limited size and anticipated use, given that the combined rear-facing units are

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<sup>1</sup> A front setback adjacent to 4 Cove Landing's pre-existing non-conforming two-family dwelling is conforming as to the residential setback of 25 feet and is not impacted by the project.

designed for no more than 6 guests (1 rear-facing king unit and 1 rear-facing double queen unit on each floor as proposed).

Effects on Neighbors are Limited.

The Sheltons, the owners of 2 Cove Landing, (hereinafter “Abutters”) are not the Resort’s only neighbors, but they are the closest neighbors to the projected work. The Abutters objected to the proposed plan with regards to Buildings A and B but not K, although the buildings are identical. Proximity to their home and perceived impacts on their use and enjoyment of their home after the proposed work is completed appear to be the issue. Again, both Buildings A and B are conforming as to setbacks and dimensions. Building A is roughly 25 feet closer to the Abutter’s property than existing Building 1 and existing Building B is roughly equally distant to the Abutter’s shared property line than the corresponding existing Building 2. The project is robustly screened from 2 Cove Landing, its closest neighbor, by virtue of the topography (only the roof and a portion of the four rear-facing units are above the 2 Cove Landing rear lot elevation), distance (the 2 Cove Landing dwelling is over 160 feet at its closest from either proposed buildings A and B) and proposed screening (over twenty mature evergreen trees of sizes varying from 8-10 feet to 14-16 feet planted at a grade higher than 2 Cove Landing’s dwelling).

Buildings A and B will be robustly screened.

The Abutters own no view easements over the Property. The Applicant continues to permit 2 Cove Landing to use a patio located fully two-thirds on the Resort’s Property and is nearest to the proposed work, making the primary location from which the Abutters would experience any impact of the proposed construction, however small, actually on the Resort’s Property. Trees growing on the Resort property have obstructed the Round Cove view in the past and trees growing in the future, independent of this project could obstruct the existing view. The Applicant had offered optional plantings would offer a view corridor but, as the Abutters responded that discussion of screening was premature, the Applicant amended its plans to provide for a fully-screened project as shown in the scaled perspective drawing by Dave Hawk, providing an as-planted representation of the screening which should only increase in stature

and breadth over time and mitigate any potential impacts off-site, however small. The net effect of the proposed two-story structures in terms of massing as seen from the Abutter's elevation is a one-story roofed structure, as that is all that would be seen looking out from the Abutter's higher elevation given that the first floors of each structure are nestled into the hillside some 10 feet below the Abutter's property's rear elevation.

No Unreasonable Condition related to Lighting is Anticipated

A concern has been raised by the Abutters regarding light trespass from the proposed redevelopment. Again, the screening at or slightly above Abutter's grade level should limit any noticeable light from the rear second floor decks of Building A and B. The deck lighting will be more than 50 feet away from the shared property line and over 160 feet away from the Abutter's home. Only 4 rear-facing exterior lights are contemplated. The exterior lighting is dark sky compliant and designed to be linked to motion sensors during evening and nighttime hours. Lighting from inside the units should be, again, limited by the screening and distance and further blocked by the nightly turndown service. Rose Cottage, which has a ground level deck and lighting far closer to the Abutter's dwelling has not been a source of complaint by the Abutters. Proposed Buildings A and B will meet the standards outlined in section 300 of the Harwich Zoning By-Law.

No Unreasonable Condition related to Noise/Sound is Anticipated.

The Resort's commitment to each of its guest's enjoyment of the property compliments its similar commitment to avoid unreasonable interference with its neighbor's enjoyment of their property. Simply put, noise and light, if they were to be excessive, would be first felt on the Resort's campus and the Resort has established processes to avoid, lessen, and, if necessary, terminate offensive conditions. Staff respond to calls and walk the campus both by day and by night. Should staff become aware of any potentially unreasonable noise, or even, if not unreasonable, noise potentially unwanted by others, calibrated efforts are made to engage and, if necessary, relocate the source of noise to another more isolated location on the

over 22-acre property. The Resort has an established track record for limiting potential noise issues before they become a problem. The former Building Department administrator confirmed that no noise complaints were lodged with the Building Department against Wequassett over the past 5 years. Similarly, a Police records request yielded only 3 complaints over the last 5 years. All complaints were addressed immediately without escalated action needed.

Some noise must be considered reasonable and anticipated noise for an abutter living adjacent to a 121 unit hotel which will not be substantially altered by the construction of 12 additional units. The Abutters confirmed at the initial Planning Board hearing that they never made a noise or light complaint to Resort management related to any existing units, including Rose Cottage, whose rear deck is only 80 feet from the Abutter's dwelling and at a comparable elevation. In comparison, Building A and B's rear decks will be no closer than roughly 35 feet from shared property line and over 160 feet from the Abutter's home (2 times as far away as Rose Cottage). It follows that the net effect of the addition of the rear decks on Buildings A and B, if any, will be sounds similar to those made by other Resort guests at Rose Cottage but from a distance twice as far away from the Abutter's dwelling

The Increase in Amenities Coverage is Minimal and will not Adversely Affect the Neighborhood or Town.

The proposed amenities coverage increase is primarily a result of the decision to pull some walkways back from the coastal bluff and to reorient and widen others to provide better access for guests, including those with limitations to accessible parking and the units, and for delivery of hotel services. All told, the increase in amenities coverage is only plus or minus 814 square feet. 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 Project, as proposed, provides Meaningful Benefits to the Neighborhood and Town as well as the Resort.

The project will provide significant benefits to the Town of Harwich and the neighborhood. The Town's expressed priority in initial department head meetings with the Applicant, was to pull development back as much as possible from the coastal bank. The proposed locations of Buildings A and B have clear environmental benefit over the existing Building 1 and 2. In particular, Building A's footprint has been pulled roughly 25 feet back from Round Cove so that a significant portion of the proposed building's footprint is outside the most sensitive buffer area, a marked improvement over the existing Building 1's location. The area where Building 1's footprint now stands is the area where the most square footage of high value mitigation will be planted. At a MEPA hearing held in response to Abutter's appeal of the Conservation Commission decision this week, the state official asked whether the buildings could be pulled even further back from the coastal bank (and in effect closer to the Abutter's property). The Harwich Conservation Commission reviewed and approved the proposed project in one evening.

The project provides three fully compliant ADA units and redesigned handicapped parking areas and walkways to insure better access to the units. Stormwater design complies with the Town By-Laws. Moreover, there is value to both the neighborhood and Town in the continued success of a five-star resort, both in terms of reputation, employment, increased tax receipts, and land values.

The Resort has been a good neighbor to the community and current ownership is committed to continuing in this pathway. The Resort hosts many nonprofits benefits, including the Housing Assistance Corporation, Cape Cod Community College and the Cape Symphony – all in a manner which aims to avoid any unreasonable impact of the gatherings on guests and on nearby neighbors. One percent of Resort guest fees are contributed towards the funding of community projects and nonprofits which, this

year are the Lighthouse Charter School, We Can, and the Harwich Conservation Trust. Twenty percent of the fees charged for dogs to stay at Wequassett goes directly to the Animal League in Brewster, Employees have a sustained record of volunteering in the community. Local people are employed on a seasonal and full-time basis. Replacing buildings which are over fifty years old with up-to-date buildings which provide expected amenities and modestly increase numbers of units for Resort guests is the engine which will help to maintain the Resort's reputation, economic bottom line, and its ability to continue to provide for guests and local residents, and the charities and nonprofits both groups collectively support.

Relief Requested:

The Applicant is seeking Special Permits from the Zoning Board of Appeals under Section 325-254(B) 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 hotel/motel 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.

Although the Applicant acknowledges that Town Counsel has indicated that a variance for the merged property is also necessary because the existing 4 Cove Landing dwelling does not meet the hotel/motel setback of 50 feet, the Applicant has not requested variance relief at this time because Town Counsel also confirmed that two primary purposes are not prohibited by the Harwich Zoning By-Law on the same property. It follows that the hotel/motel use would have the 50-foot commercial setback and a residential use would have a setback applicable to "all other uses." As the residential use is existing, the dwelling and its use will be unchanged, and dwelling is not affected by this application, the Applicant

asks that this Board hear the petition for special permit relief that is clearly needed: special permit relief for pre-existing nonconforming hotel/motel use and amenities coverage; and allow the question of whether a variance is required here to be determined by either the agreement of Town Counsel and Commissioner Mee or, if necessary, a Declaratory Judgement at a later date. As the Applicant's counsel, I have been in communication with Commissioner Mee and have provided him with the revised plans showing the merged parcels needed for his determination.

The Applicant respectfully submits that the desired special permit 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 also 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 is a good neighbor and has a shared interest with neighbors and its guests in ensuring that noise generated on the Resort 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 28 Atlantic and organized events such as weddings or receptions;

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. The buildings are less than 6,000 sq. feet in floor area each and comparable to the other existing Cove-facing two-story buildings adjacent to the proposed work. The buildings will be of comparable materials and color palette and the plantings and walkways will be designed to complement the structures and function well; 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 structures and site conditions including amenities; 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.