

October 18, 2016

VIA OVERNIGHT DELIVERY

Hingham Zoning Board of Appeals
Town Hall
210 Central Street
Hingham, Massachusetts 02043

Re: Avalon Hingham Shipyard II, 319 Lincoln Street, Hingham, MA (the “Project”)
Comprehensive Permit – Request for Insubstantial Change

Dear Members of the Board:

On behalf of Avalon Hingham Shipyard II, LLC (the “Applicant”), this letter is a request that the Hingham Zoning Board of Appeals (the “Board”) determine that the proposed changes described below are insubstantial changes to the Project pursuant to 760 CMR 56.05(11) of the regulations governing comprehensive permits issued under M.G.L. c. 40B.

I. BACKGROUND

The background to this request is as follows:

1. The Board issued a comprehensive permit pursuant to M.G.L. c. 40B by virtue of a Decision filed with the Hingham Town Clerk on May 17, 2016 (the “Comprehensive Permit”).
2. One of the prerequisites for the Project, and all developments undertaken under Chapter 40B, is that the project be eligible for a “subsidy”, as evidenced by a determination of project eligibility from a subsidizing agency. In the case of the Project, as noted in the Comprehensive Permit, the necessary project eligibility determination was issued by the Massachusetts Housing Partnership (“MHP”) under the Permanent Rental Financing Program.

3. The Applicant has determined that it has the financial ability to finance the Project with its own funds and does not require a construction loan or permanent financing. As a result, the Applicant seeks to satisfy the “subsidy” requirement through the Local Initiative Program (“LIP”). Under the LIP program for 40B projects, the Department of Housing and Community Development (“DHCD”) serves as the subsidizing agency and the subsidy is non-financial and is in the form of oversight and assistance provided by DHCD to assist the Project.
4. The LIP program requires the endorsement of the Hingham Board of Selectmen. Pursuant to a Memorandum of Agreement dated April 21, 2016 by and between Applicant and the Board of Selectmen, the Board of the Selectmen agreed to reasonably cooperate in the conversion of the Project into a LIP project.
5. The Applicant therefore requests, as an insubstantial change to the Comprehensive Permit, the ability to obtain LIP approval as the necessary “subsidy” for the Project under the 40B Regulations.

II. PROPOSED MODIFICATIONS

The Applicant proposes to make modifications to the Comprehensive Permit to reflect the proposed change to the LIP by adding the following proposed language:

“Notwithstanding anything in this permit to the contrary, as an alternative to MHP acting as the subsidizing agency for the Project, the Applicant may obtain approval by the Department of Housing and Community Development (‘DHCD’) pursuant to the Local Initiative Program (‘LIP’).”

III. DISCUSSION

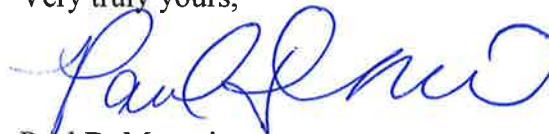
760 CMR 56.05(11) provides that after the issuance of a comprehensive permit granted by a zoning board, an applicant desiring to change aspects of its proposal may notify the board in writing. 760 CMR 56.07(4)(c) and (d) describes factors to take into account when determining whether a change is substantial or insubstantial. 760 CMR 56.07(4)(d)(5) specifically states that “[a] change in the financing program under which the Applicant plans to receive a Subsidy, if the change affects no other aspect of the proposal” should generally not be considered a substantial change. That is precisely the situation here. The Applicant is proposing that the LIP program be added as an acceptable Subsidy program for the Project. There are no other changes proposed to any other aspect of the Project. The change will not change the physical characteristics of the Project or its operation. Especially in view of the Board of Selectmen’s agreement to cooperate with the LIP proposal for the Project, we respectfully request a determination that the proposed modification to the Comprehensive Permit be approved as an insubstantial change.

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The Applicant respectfully requests that the Board consider this matter at its next regularly scheduled meeting on Wednesday, October 19, 2016.

Thank you very much for your consideration.

Very truly yours,



Paul D. Momnie

Attorney for the Applicant

PDM

cc: Emily Wentworth – Senior Planner
Susan Murphy – Special Town Counsel for Real Estate and Land Use
Michael Roberts and Julia Wynyard – for the Applicant
Steven Schwartz, Esq. – Attorney for the Applicant