

LAW OFFICES  
**ERIC L. PETERS**  
(508) 693-8830  
Telecopier (508) 693-8830

Street Address:  
3 MARINER'S LANDING  
EDGARTOWN, MA 02539

Mailing Address:  
POST OFFICE BOX 1117  
EDGARTOWN, MA 02539

May 30, 2022

Mr. Alex Elvin, DRI Coordinator  
Martha's Vineyard Commission  
P.O. Box 1447  
Oak Bluffs, MA 02557

By Email

Re: **Modification Request Lagoon Ridge Subdivision DRI 464-M3**

Dear Alex:

I am following up on our discussions and email the week of May 9-13 concerning the three modification requests to be filed by CapeBuilt Lagoon Ridge, LLC ("CapeBuilt").

The second modification request is to delete Condition 11.1 from the 2016 MVC Decision and acknowledge that the Lagoon Ridge subdivision will no longer have 6-8 units of housing for occupants over age 55 in Cluster C as originally proposed and as described in the 2016 Decision at Section 1. Summary "Description" and at Section 3.1 "Project Description."

The Oak Bluffs Flexible Zoning Bylaw Section 7.3 offered incentives to "provide dwelling units restricted to occupancy by persons over the age of fifty-five (55)..." The Oak Bluffs Planning Board Special Permit issued in 2018 and the Modification Decision in 2021 at Section 11 provided conditions regarding the "fifty-five (55) and Over" at Lagoon Ridge. The Modification Decision called for a fourth affordable unit that would also be restricted to "fifty-five (55) and Over."

CapeBuilt commenced LIP application to the Department of Housing and Community Development ("DHCD") early this year for the four affordable units as required by the 2021 Modified Decision. In the course of DHCD staff review, CapeBuilt was advised that the "55+" component of the affordable units violated the Fair Housing Act ("FHA") and DHCD could not approve the LIP application for that reason. A copy of DHCD policy concerning age restricted housing and the FHA was provided and I enclose a copy.

More specifically, all of the "55+" housing in Lagoon Ridge would violate FHA requirements as their "safe harbor" rule allows age restricted housing only when 80% of all units in a development are so restricted. The original Lagoon Ridge proposal called for 6 out of 25 units to be "55+" or only 24%.

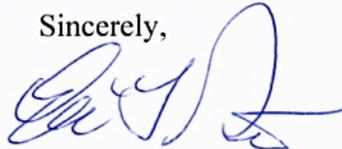
CapeBuilt alerted the Planning Board of this issue and counsel for CapeBuilt researched FHA requirements and wrote to Oak Bluffs Town Council concerning the violation issues associated with the "55+" component of Lagoon Ridge, asserting that CapeBuilt would be in violation of FHA rules if it proceeded as originally approved, citing cases including *United States v. Fountainbleau Apartments*, 566 F.Supp.2d 726, 734 (E.D. Tenn. 2008) and *Simovits v. Chanticleer Condominium Ass'n*, 933 F.Supp. 1394 (1996). Town Council reviewed the matter and the Planning Board determined that it would no longer require the 55+ units in Lagoon Ridge.

I am enclosing copy of the letter from Ewell Hopkins, Planning Board Chair, addressed to CapeBuilt dated March 7, 2022 and copied to Matt Rossi, the Oak Bluffs Local Inspector, indicating agreement with the position of CapeBuilt's counsel.

CapeBuilt subsequently informed DHCD that there was no longer a "55+" requirement in Lagoon Ridge and DHCD has now approved the LIP application concerning the four affordable units.

We discussed setting the modification requests on the agenda for the LUPC meeting Monday, June 6 and review by the Commission on Thursday, June 16. Please let me know if you have any questions or need any further information.

Sincerely,



Eric L. Peters

Enclosures

cc: Robert L. Brennan, Jr., Manager (by email)



## **Local Initiative Program Policy Regarding Restrictions on Children in Age-Restricted 55+ Housing**

It is DHCD's longstanding policy, consistent with its obligation to affirmatively further fair housing under the federal Fair Housing Act, to maximize opportunities for families with children in housing that receives DHCD subsidy or program approval. Families with children not only are protected under federal and state civil rights laws, but also face particular barriers in accessing affordable housing across the Commonwealth. It is also longstanding DHCD policy that housing subject to DHCD subsidy or program approval is also subject to DHCD approval of marketing and resident selection procedures.

Accordingly, it has long been DHCD's policy and practice not to approve affordable units under the Local Initiative Program ("LIP"), including Local Action Units ("LAUs"), in age-restricted housing for persons 55 years of age or older ("55+ housing"), if selection or occupancy policies, special permits or other zoning approvals, or underlying zoning would exclude persons 18 years of age or younger from occupying those affordable units.<sup>1</sup> DHCD is restating the policy at this time given the inquiries on the subject.

In submitting an application to LIP for 55+ housing, the following must be submitted to DHCD for review as applicable to the housing:

- Occupancy rules or policies in addition to the LIP required Affirmative Fair Housing Marketing and Resident Selection Plan
- Affordable housing restriction(s) in addition the LIP required Regulatory Agreement and Declaration of Restrictive Covenants
- Condominium documents, including the Master Deed and Declaration of Trust
- Zoning bylaws
- Zoning permit
- Other relevant documents as may be requested by DHCD

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<sup>1</sup> Age-restricted housing for persons 55 years of age or older ("55+ housing"), to the extent permitted under federal and state law including the federal Fair Housing Act (42 U.S.C. § 3601 *et seq.*), as amended, and Massachusetts General Laws Chapter 151B, is not required to exclude persons 18 years of age or younger. Nothing in this policy is intended to prohibit compliance with applicable federal and state legal requirements (e.g., the requirement that at least 80% of the occupied units in the housing are occupied by at least one person who is 55 years of age or older).



**TOWN OF OAK BLUFFS, MA  
PLANNING BOARD**

P.O. Box 1327  
Oak Bluffs, MA 02557  
Ph. 508-693-3554 X117 Fax 508-693-5375

March 7, 2022

**BY Email:** Ryan M. Roy [ryan@capebuilt.com](mailto:ryan@capebuilt.com) and Rob Brennan [rob@capebuilt.com](mailto:rob@capebuilt.com)

CapeBuilt Partners, LLC  
6 Chestnut Street  
Suite 103  
Amesbury, MA 01913

Re: **Lagoon Ridge Modified Special Permit dated February 25, 2021**

Dear Rob and Ryan:

I have reviewed the correspondence from your counsel dated March 2, 2022, addressed to our counsel, Michael A. Goldsmith, concerning the legality of Condition No. 11 of the Modified Special Permit issued to CapeBuilt Partners, LLC, dated February 25, 2021 (the "Special Permit"), concerning the requirement that CapeBuilt construct five (5) units deed restricted for occupancy by persons fifty-five (55) years of age and older. I have consulted with counsel and we have received advice from the MA Department of Housing & Community Development (DCHD) on this issue.

We concur with your assessment, and the assessment of the DHCD, that requiring CapeBuilt to comply with Condition No. 11 for the Lagoon Ridge project would not meet the state and federal requirements for imposing age-based restrictions under the so-called "80-20" safe-harbor rule. I am copying the Building Official on this letter.

I am sure you understand CapeBuilt is still required to establish the (4) affordable units under the terms of the Special Permit, and to secure the necessary approvals from DCHD, including complying with any of the other conditions of the Special Permit.

Very truly yours,

T.E Hopkins, Chair  
Oak Bluffs Planning Board

cc: Eric Peters, Esq.  
Michael A. Goldsmith, Esq.  
Matt Rossi, Building Department