



CCPEDC  
IS NOW  
THE CAPE COD COMMISSION

**CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION**

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

DATE: December 6, 1990

TO: Mr. Raymond C. Chasse, Trustee of  
E & R Realty Trust

FROM: Cape Cod Commission

RE: Hardship Exemption Request Modification  
Cape Cod Commission Act, Section 23

APPLICANT: Mr. Raymond C. Chasse, Trustee  
of E & R Realty Trust

PROJECT: Harwich Commons, Harwich, MA

---

**MODIFICATION OF DECISION OF THE CAPE COD COMMISSION**

SUMMARY

The Cape Cod Commission (The Commission) hereby approves the modified application of Mr. Raymond C. Chasse, Trustee of E & R Realty Trust for a Hardship Exemption under Section 23 of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended, for a shopping plaza known as Harwich Commons. The Modification of the Decision is rendered pursuant to the vote of the Commission on December 6, 1990. The original decision on this application was granted by a vote of the Commission on July 19, 1990.

PROJECT DESCRIPTION

The project has been modified from a 110,400 square foot retail shopping plaza to 109,116 square feet of retail space. The site is located on the southeast corner of the intersection of Routes 137 and 39 in East Harwich. It is 789,634 square feet in area. The parcel number is #U3 and #U3-1 on Assessor's Map #87. The plaza will now consist of eleven stores, including one anchor supermarket totaling 61,266 square feet, one 30,000 square foot retail store, and nine small shops. In the event that no tenant is found for the 30,000 square foot store, seven shops totaling 12,000 square feet will be constructed. A total of 423 parking spaces is proposed, separated by landscaped islands.

### PROCEDURAL HISTORY

This modification of the Hardship Exemption under Section 23 of the Act was filed with the Commission on November 14, 1990. A duly noticed public hearing on the modification was conducted by the Commission pursuant to Section 5 of the Act on December 6, 1990 at 2:30 p.m. in Rooms 11/12 in the Barnstable County Superior Court House, Route 6A, Barnstable, MA.

#### Materials Submitted For The Record

Materials submitted by the applicant pursuant to the modification include:

- Landscape, Parking and Coverage Plan, prepared by William Lieberman, R.P.E., dated November 13, 1990 and revised on November 28, 1990
- Downing Corporation brochure, submitted November 20, 1990

Additional Materials:

- Commission staff report, dated November 29, 1990

The application and notice of public hearing relative thereto, the Commission staff's notes, exhibits, minutes of all hearings and all written submissions received in the course of the modification proceedings are incorporated into the record by reference.

#### Testimony

The hearing on the modification to the decision was opened at 2:35 p.m. in Rooms 11 & 12 of the Barnstable Superior Courthouse, Route 6A, Barnstable, MA. Commission Chairman Richard Armstrong read the hearing notice. Attorney Robert Hall made a statement on behalf of the applicant to describe the reason for the modification. Since the granting of the original Hardship Exemption, the applicant had secured a tenant for one of the anchor stores, Stop & Shop. The space requirements of the proposed tenant necessitated the modifications to the site plan. Conditions of the hardship are still present. Foreclosure proceedings have been postponed pending approval of the modification by the Commission. The applicant's attorney also requested that three changes be made to the text of the decision document. These requests were as follows: that the time period for commencing construction be changed from July 19, 1990 to December 6, 1990; that the finding related to traffic cross-reference the amount of \$32,000.00 listed in the condition; that the wording "substantial" changes be added to condition #10.

Sharon Rooney of Commission staff described meetings that had been held with the applicant and engineer to discuss issues brought out by Commission staff. No regional issues would be affected by the proposed modification to the site plan. The issues related primarily to site design. These issues included: additional building setback requirements, tree requirement changes, and parking requirements. She then described the modified decision and proposed changes to the text.

Discussion by the Commission and public comments then followed. Discussion related primarily to the applicant's request to extend the time period for commencing construction. Alix Ritchie stated that the reason for limiting the Hardship Exemption to one year was due to concerns on the part of Harwich town officials that the project not remain an eyesore. Sandy Daniels, of Harwich Board of Selectmen testified that the town wanted to see the project move forward and not remain a dustbowl in perpetuity. The town would therefore

support the extension. Jim Noonan, Assembly of Delegates, also requested that the Commission grant the extension. Vicki Lowell made a motion that the text be changed to read that the Hardship Exemption be valid until December 1, 1990. This motion was seconded and approved unanimously. The other changes requested by the applicant were also approved by the Commission.

Alix Ritchie made a motion to close the hearing, which was seconded and unanimously approved. David Humphreys then made a motion to approve the modified decision according to plans dated November 28, 1990, with the changes discussed during the hearing. The motion was seconded. Andy Young made a statement that he was still opposed to the project as he was originally. A vote was taken on the motion. A. Young, D. LeBlanc, and A. Ritchie were opposed. The motion carried to grant approval of the modification to the decision.

### JURISDICTION

The proposed 109,116 square foot shopping plaza of E & R Realty Trust qualifies as a Development of Regional Impact under Section 12 (c) (6) of the Act, which requires review of "Any proposed retail or wholesale business, office or industrial development, as well as any private, health, recreational or education development which has a floor area as follows:

New construction: greater than ten thousand square feet . . ."

Due to substantial changes to the site plan approved in the original decision, these modifications must be reviewed at a public hearing with a vote taken on the modified decision and the modified decision filed with the Registry of Deeds.

### FINDINGS

The Commission has considered the modified hardship exemption application of E & R Realty Trust for the proposed commercial project, and based on consideration of such application, the information presented and Commission staff recommendations at the public hearing, the findings have been modified as follows:

See original decision for findings #1-3 which are incorporated into this decision by reference.

Finding #4 of the original decision is modified to read as stated below:

#### **TRAFFIC**

4. Although the reduction in square footage with the modified design will result in a slightly lower negative reserve capacity than listed in the original decision, the overall negative reserve capacity for the northbound left and through maneuvers will not change significantly. Therefore, the overall mitigation for the project remains the same as in the original decision.

Since 20% of the project's traffic will travel through the intersection of Route 137 and Queen Anne Road, significant impacts will result. Without improvements, by 1994, the Route 137 approaches are expected to have a negative reserve capacity for through and left-turning traffic. This will lead to significant delays for vehicles traveling through the intersection on Route 137. It also leads to drivers accepting unsafe gaps between vehicles

to pull out into the intersection or even forced flow conditions where drivers push their way into the traffic stream, forcing other vehicles to take evasive actions.

Although the negative reserve capacity will occur for the Route 137 approaches with or without the Chasse development, the additional traffic from the project will substantially exacerbate the unsafe conditions. The negative reserve capacity will increase from approximately 52 vehicles to 120 vehicles during the peak hour. The southbound Route 137 approach left and through maneuvers will increase from a negative reserve capacity of 408 vehicles to 524 vehicles during the peak hour.

The towns are currently pursuing an improvement alternative that includes minor widening, improved channelization, new lane markings and four-way stop sign control. The cost of these improvements is approximately \$96,500. Chatham has appropriated approximately \$25,000 towards this project; Harwich plans to use Chapter 90 funds for their portion.

It is important to understand, however, that these improvements will allow satisfactory operations for approximately 5 years. At that time, further improvements, including acquisition of right-of-way and signalization may be necessary. These improvements are estimated to cost an additional \$100,000 - \$200,000, above and beyond the initial expenditure of \$96,500.00.

The Harwich Commons project should be required to pay an equitable share of both the proposed improvements and a share of the needed future improvements. Based on the review of the likely impacts, a one-third share of the total cost of improvements is equitable. This equitable share is \$32,000.00.

See original decision for findings #5-9 which are incorporated into this decision by reference.

Findings #10-11, as stated below, are additions to the original findings:

10. The modified site plan is not substantially more detrimental than the original site plan.
11. The economic conditions of the petitioner, upon which the original hardship was based, continue to exist.

#### CONCLUSION

Based upon the findings in the original decision and as modified or added above, conclusions #1&2 remain as stated in the original decision. The following conclusions are additions to the original conclusions:

1. That a literal enforcement of the provisions of the Act continues to involve substantial hardship, financial and otherwise to the applicant and the Town of Harwich. This conclusion is supported by the finding that foreclosure proceedings continue to occur. The granting of the exemption may cure this problem by increasing the potential for future tenants. In addition, construction on this site will eliminate an eyesore in the community.
2. That desirable relief may be granted for the modifications without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the

Act. This conclusion is supported by finding #10, and that the applicant has agreed to the conditions listed below which mitigate the problems listed in the findings above.

The Commission hereby approves E & R Realty Trust, Ray Chasse, Trustee, a modification to the Hardship Exemption from the terms and provisions of the Act, pursuant to Section 23 of the Act, granted on July 19, 1990. All conditions listed in the original Hardship Exemption decision shall continue to apply unless specifically changed by this document. Conditions #2,5,6,7 are unchanged. Conditions #1,3,4,8 are changed as stated below. Conditions #9&10 are added. All conditions attached to approval of the project are listed below:

**1. Time Frame for Approval of Project**

- a) For the purpose of addressing concerns by Town of Harwich officials regarding the expeditious construction of the project and to encourage it to be completed in a timely manner, this exemption is valid until December 1, 1991. Construction under this exemption must commence within this year and be continued through to completion as continuously and expeditiously as is reasonable.
- b) If the Applicant fails to meet one or more of the conditions listed above, this exemption shall lapse and the proposed development shall be automatically deemed to be a Development of Regional Impact requiring review under the Cape Cod Commission Act.

**2. Traffic**

- a) With the intent of mitigating the impacts of this project to the intersection of Queen Anne Road and Route 137, this hardship exemption shall be conditioned upon the Applicant depositing the amount of \$32,000.00 in an escrow fund, which fund shall be dedicated to the sole purpose of performing work to improve the intersection of Route 137 and Queen Ann Road in East Harwich, Massachusetts. The Applicant shall make such contribution to the escrow fund pursuant to an escrow agreement, which shall be of form and content satisfactory to Counsel to the Cape Cod Commission, and which shall designate a bank or other fiduciary as the escrow agent. The Applicant's contribution to the escrow fund shall be irrevocable, and shall be a precondition to the issuance of any certificate of occupancy for the Applicant's proposed development by any municipal agencies. The contents of the escrow fund shall be released upon the vote of the Commission, and shall be dedicated to the improvement of the intersection of Routes 137 and Queen Anne Road.
- b) With the intent of further mitigating the impacts of this project on the intersection of Route 137 and Route 39, the Applicant shall make the following improvements:
  - Provided the Town of Harwich agrees, curbing shall be installed along the southwest quadrant of the intersection due to the steep grade between the intersection and the Harwich East parking lot;

between the intersection and the Harwich East parking lot;

- Provided the Town of Harwich agrees, a minimum of a 4' grass shoulder should be placed along all of the widened portions of the intersection. It is most critically needed along the west side of Route 137, south of the intersection;

- Complete roadway improvements to the eastern leg of Route 137. The existing widening does not drain properly. Catch basins are currently above the level of the road and depressions exist. The roadway shall be leveled with Type I mix. Preparation for leveling shall include removing wooden forms (presumably placed around removed utility poles), removing temporary cold patch and replacing it with Type I binder, full depth patching of allegated areas with Type I binder, sweeping with a vacuum type sweeper and applying a tack coat to the existing road surface. A wearing course of 1 1/2" (compacted thickness) of Type I mix shall then be applied. A cross slope of at least 1/4" to 1' shall be maintained. This will bring the road surface approximately flush with the island. Care shall be taken that all runoff is directed towards catchbasins in order to eliminate ponding. The improved area shall extend to the "end road construction" sign located approximately 82' north of the centerline of Continental Drive.

Complete remaining roadway improvements shown on plans. Cross slopes of all finished improvements shall be 1/4" to 1'. All runoff shall drain off the road surface. All roadway improvements must meet or exceed construction specifications of the existing roadway in addition to satisfying Harwich subdivision construction standards. Blind application of subdivision construction specifications to a collector roadway shall not be a substitute for sound engineering judgement in the pavement design process. All improvements which have not yet been surfaced and do not meet the above criteria shall be excavated and a uniform pavement foundation shall be provided which has been compacted in lifts as specified in the Harwich regulations.

### **3. Access**

To encourage and enable the limitation of future curb cuts onto Route 39, the Applicant agrees, if requested, to grant for reasonable consideration, satisfactory to the applicant an easement for future access to the adjacent undeveloped property via the access road to Harwich Commons Shopping Center from Route 39. Such proposed easement is located as shown on the plan of Harwich Commons by William Lieberman dated November 28, 1990.

### **4. Landscaping and Parking**

This condition has been changed to read as follows: The Applicant shall complete landscaping based upon the following conditions, as illustrated on the plan of Harwich Commons by William Lieberman dated November 28, 1990, prior to the issuance of a building permit:

a) Trees in parking islands and along interior roadways:

- Trees shall be planted 25' on center in parking bays and islands;
- Trees shall be 2-3" caliper in size;
- Japanese Zelkova (*Zelkova serrata*) should be used at perimeter of main parking area and along entry drive;
- Little Leaf Linden (*Tilia cordata*) should be used for all interior parking lot bays;
- Low growing vegetation shall be placed in areas where vehicular sight distance is of concern;
- Flowering trees shall be placed at Route 39 entrance (varieties of dogwood, cherry or pear);
- Pedestrian mall planters shall be provided in front of all retail stores except supermarket anchor. These planters shall be a minimum of ten feet in width and shall be planted with low growing evergreen and deciduous shrubs;
- Five trees shall be planted per every 1500 square feet (50% evergreen) in the back retention area. Existing trees in these areas of 2" caliper or greater shall count towards this requirement.
- 15 trees shall be planted in the green area north of the building.

b) Shrubs and Ground Covers

- Traffic islands may be planted with all species listed on existing plan except crown vetch which is extremely invasive. Vetch may be used in other areas however;
- Since Mountain Andromeda & Japanese Yews do not do well in parking lot environments (glare, heat, etc.), Rugosa Rose & Beach Plum shall be used instead.
- Green areas that exceed 10,000 square feet (excluding parking islands and Route 39 access area) should be hydroseeded with a wildflower or wildgrass mixture.

c) Parking:

- Parking shall be limited to a maximum of 423 spaces as indicated on site plan dated November 28, 1990. A floor plan shall be submitted to the Commission prior to the issuance of a building permit. Parking shall then be revised to reflect the total leasable floor area as indicated on the floor plan.
- A twelve-foot wide divider shall be provided along the entrance roadway as indicated on site plan and planted with low growing shrubs;
- Parking bays shall not exceed 210 feet in length. All islands and dividers (including ends) shall be provided as shown on the site plan dated November 28, 1990 and shall be a minimum of ten feet wide. One Linden tree shall be planted in each traffic divider.

## **5. Water Quality**

Due to the location of the project within a Water Resource District, the following commercial uses, which discharge large amounts of water which can have a detrimental impact on groundwater quality shall be prohibited:

- restaurants, including any establishment serving food or beverages;
- dry cleaners and laundromats (however, establishments providing only for drop off service where work is done off-site is permitted);
- beauty salons.

## **6. Lot Coverage**

In order to protect the intent of the Water Quality District and ensure that landscaped areas will be retained, impervious surfaces on the site will not exceed forty percent and building coverage will not exceed twenty percent, except for the access easement as provided for in condition #3.

## **7. Solid Waste/Recycling**

a) The owners and tenants shall be required to separate cardboard from all other wastes generated by the development and provide contracted removal to material brokers for eventual recycling, thus avoiding land disposal and incineration. The applicant shall have the right to apply for relief from this condition in the event that market conditions do not permit compliance.

b) All dumpsters shall be surrounded by evergreen vegetation or opaque fencing as a visual screen.

## **8. Architectural Design**

Architectural design shall be completed in a traditional Cape Cod architectural style. The Applicant shall prepare final elevation drawings for Commission staff approval, based upon the following conditions, prior to the issuance of a building permit:

- Natural siding shall be used for the exterior of the structure. It is strongly recommended the wood clap boards be used. Concrete block, concrete brick, metal buildings, drivit, vinyl siding are examples of materials which are not acceptable. The structure under construction on the ANR lots adjacent to the site shall serve as an example;

- Variations in the roof lines and facades shall be provided. The structures under construction on the ANR lots adjacent to the site shall serve as an example;
- No roof signs shall be permitted. Wall signs shall be limited to a panel below the eaves of the roof. These signs shall not exceed thirty-two (32) square feet (per Harwich by-law) or one (1) square foot per linear foot of store frontage, whichever is smaller, and shall not exceed three (3) feet in height. Only externally illuminated signs shall be permitted (including both wall and free-standing signs), as is consistent with the Harwich Zoning by-law.

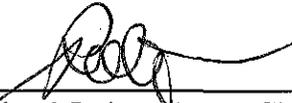
**9. Certificate of Compliance**

- The Applicant shall be required to receive a certificate of compliance from the Cape Cod Commission or its designee before local officials may issue a certificate of occupancy for the development.

**10. Plan Submission**

- Plans submitted with this modification shall become a part of the decision and any substantial changes must be approved by the Cape Cod Commission.

The Cape Cod Commission hereby approves the modification to the decision for a Hardship Exemption with attached conditions, pursuant to Section 23 of the Act.

  
\_\_\_\_\_  
Richard S. Armstrong, Chairman

12/6/90  
Date:

  
\_\_\_\_\_  
Notary  
(My Commission Expires May 7, 1992)

12/6/90  
Date: