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THE CAPE COD COMMISSION

**CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION**

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

DATE: November 29, 1990  
TO: Mr. John Mikutowicz  
FROM: Cape Cod Commission

RE: Development of Regional Impact Request  
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Mr. John Mikutowicz  
PROJECT #: TR90030  
PROJECT NAME: Two-Block Realty Trust  
Route 6A  
West Barnstable, MA 02668

MAP/PARCEL: Map 179 Lot 1-1

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DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Mr. John Mikutowicz for a Development of Regional Impact (DRI) under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Two-Block Realty Trust 6000 square foot addition on Route 6A in West Barnstable, MA. The decision is rendered pursuant to the vote of the Commission on November 29, 1990.

PROJECT DESCRIPTION

The project consists of a 6,000 square foot addition to an existing commercial/office building on approximately 1.2 acres. The site is located approximately 300 feet east of the intersection of Route 149 and the Old King's Highway (Route 6A). The site is divided by the VB-B district and RF district zoning boundary. The addition will be used as two offices with storage above. To accommodate the new structure, additional parking will be provided on the site. Site drainage, septic and landscaping will also be upgraded.

PROCEDURAL HISTORY

The project was referred to the Commission by the Old King's Highway District Committee and town of Barnstable's Site Plan Review Committee on April 24, 1990. The project has received approval from the Old King's Highway District Committee and is pending the town of Barnstable's Site Plan Review approval. The Applicant will also be required to obtain a special permit from the Barnstable Zoning Board of Appeals to expand a legal pre-existing non-conforming structure.

Applications for a Development of Regional Impact (DRI) and DRI Exemption were filed with the Commission on July 21 and July 23, 1990 respectively. A public hearing was opened on June 21, 1990 and continued until August 28, 1990. A duly noticed public hearing pursuant to Section 5 of the Act was held on both the DRI and DRI Exemption applications by an authorized Subcommittee of the Cape Cod Commission at the Barnstable Town Hall, Hyannis, MA on August 28, 1990 at 3:00 p.m. The public hearing was closed on this date and the record was kept open for the submission of written information until the close of business on September 27, 1990. Additional information was requested on the following issues: septic system/well locations within 300 feet to the north of the site; additional drainage calculations; and consultation with the Barnstable Site Plan Review Committee by the staff regarding parking layout and site design issues.

The DRI Exemption request was withdrawn by the Applicant on September 7, 1990. The subcommittee held public meetings after the close of the public hearing to deliberate this project on October 2, October 15, and November 7, 1990. Following several revisions to the original proposal, the subcommittee recommended DRI approval with conditions on November 7, 1990.

The Cape Cod Commission voted to approve the application of Mr. John Mikutowicz for a Development of Regional Impact with conditions on November 29, 1990.

#### Materials Submitted for the Record

##### Materials Submitted by the Applicant:

- DRI Application dated July 21, 1990
- DRI Exemption Application dated July 23, 1990
- Site Plan and Details, Braman Engineering Co., Ltd. dated September 29, 1988 and revised June 15, August 1, August 2, August 14, September 19, October 9, October 24, November 8, 1990
- Site Plan illustration and elevations for Old King's Highway HDC dated March 3, 1989
- Project Notification Form, Mass. Historical Commission, received September 12, 1990
- copy of deed
- U.S. Geological Survey map showing site location
- town of Barnstable zoning map
- letter and assessor's map with well/septic locations dated September 12, 1990
- letter with proposed conditions dated October 12, October 15, and October 31, 1990
- procedural history dated October 17, 1990

##### Additional Materials:

- DRI Referral form dated April 7, 1990
- Cape Cod Commission staff reports dated August 23, October 2, and November 7, 1990
- Decision Extension Agreement received October 22, 1990
- Old King's Highway Regional Historic District Committee Certificate of Appropriateness, dated April 5, 1989
- extension letter from Old King's Highway HDC, dated May 2, 1990
- letter from town of Barnstable, Office of Town Manager, received August 26, 1990
- letter from Braman Engineering Co., Ltd., to Massachusetts DPW, received October 11, 1990

#### Testimony

The Commission heard oral testimony at the August 28, 1990 hearing from the applicant's representative, Suzanne Geoffrion. She described the project location and the current use of the site as 4400 square feet of retail use. The proposal is to add to that structure with a two-story office addition totaling 6000 square feet with a conference room on the top floor. The proposal has

received Old King's Highway approval, with local Site Plan Review approval still pending. No wetlands exist on the site, but the Great Marshes are 2500 feet to the north. All stormwater is to be retained on-site.

A staff report outlined concerns for traffic and site design. The staff recommended that use of the site should be restricted to office use which would minimize traffic impacts, and that the driveway be built to conform to MDPW standards. Site design concerns related to parking, driveway layout and landscaping provisions.

Comments from the subcommittee at this hearing concerned moving two parking spaces to provide additional greenspace along Route 6A, and the status of a right-of-way fronting on Route 6A adjacent to the Applicant's property. Additional drainage information regarding septic/well locations within 300 feet north of the site was requested of the Applicant.

The Commission also received oral testimony from public officials and members of the public as described in the minutes of the Subcommittee public hearing(s) dated August 28, October 2, and November 7, 1990.

At the October 2, 1990 subcommittee meeting the Applicant submitted additional septic/well location data. It appeared to the staff that the proposed septic location would not have an impact on the Great Marshes. The staff reported at this meeting that a site visit had identified stormwater runoff concerns due to clay soils on-site as well as off-site runoff from an adjacent auto sales yard. At this meeting it was also noted that the proposed conference area on the second floor of the building had not been included in the parking calculations. Therefore, proposed conditions prepared by staff for this meeting would not be discussed until the applicant could submit a plan that would be in conformance with local parking requirements. The subcommittee would recommend denial of the project based on non-conformance with the local by-law unless the applicant could redesign the project.

Additional subcommittee meetings were held to discuss proposed conditions and revisions to the site plan made to address the concerns of the subcommittee. At the October 15 meeting the staff noted that since the last meeting a proposed zoning change had been adopted by the town of Barnstable which would affect the proposed building coverage. The new regulations would allow only 10% building coverage which would effectively eliminate this proposed expansion unless a special permit could be granted on the local level.

The subcommittee reached agreement with the applicant on proposed conditions and changes to the site plan on November 7, 1990. These changes included a reduction in parking to a total of 45 spaces, with relocation of two spaces to the rear of the site, thus providing additional greenspace adjacent to Route 6A. Parking was reduced by designing the building for two tenants instead of four as originally proposed, as well as changing the top floor of the office from conference room to storage use. The subcommittee voted at this meeting to recommend approval with conditions to the full Commission.

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

### JURISDICTION

The proposed 6000 square foot addition 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...which is an addition...greater than 5000 square feet."

FINDINGS

The Commission has considered the application of Mr. John Mikutowicz for the proposed addition of Two-Block Realty Trust, and based on consideration of such application and upon the information presented at the public hearing, makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The town of Barnstable's zoning by-laws were changed during Cape Cod Commission review from a maximum of 25% building coverage to allowing a maximum of 10% building coverage. Therefore, the project was not in conformance with local zoning by-laws. The Applicant has the ability to file for a special permit with the Zoning Board of Appeals as an expansion of a legal non-conforming pre-existing structure.
2. Significant traffic impacts would result if retail use was permitted on the site. Therefore, the site should be restricted to office use only which will produce less traffic volume.
3. The scenic values of the Old King's Highway will be negatively affected by the proposed project due to the dominance of parking on the site. This impact should be reduced by relocating parking spaces to the rear of the site where possible and by providing landscaping which will adequately screen the parking from the roadway.
4. Upgrading the site's septic system is adequate for the proposed use and will not cause a negative impact on the Great Marshes, a regionally significant coastal resource.
5. The existing curb cut opening is poorly defined and should be designed to conform to MDPW standards to ensure safety for vehicles entering and exiting the site.
6. An existing easement to residential land adjacent to the Applicant's property, if used, would create significant traffic hazards and should therefore be relocated to coincide with the proposed curb cut for the project.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes that, pursuant to Section 13(d)(1), the probable benefit of the proposed development outweighs the probable detriment. This conclusion is supported by the following findings:

- Site design, including parking, drainage and landscaping will be significantly improved with project construction.
- Safety improvements will be accomplished through improvements to the driveway opening and relocation of an existing easement to conform to the proposed driveway location.

The Commission also concludes that, pursuant to Section 13(d)(3), the proposed development is not consistent with local development by-laws. This conclusion is supported by the finding that a local zoning change occurred while the project was under Commission review. Commission approval is granted with the understanding that it is necessary for the Applicant to file for a special permit with the Zoning Board of Appeals as an expansion of a legal non-conforming pre-existing structure.

Therefore, the Commission concludes that approval is granted for the proposed development as a Development of Regional Impact, provided that the following nine conditions are met:

- 1). The Applicant shall receive a special permit from the Barnstable Zoning Board of Appeals as an expansion of a legal non-conforming pre-existing structure.
- 2). The proposed building shall be limited to office uses only. No retail or wholesale activity shall be permitted in this structure. The top floor of the proposed building shall be limited to storage use only.
- 3). The driveway into the site shall conform to MDPW standards.
- 4). Prior to the issuance of any building permit for the project, the easement granting a right of way over the property shall be either eliminated or realigned to coincide with the existing curb cut on the site.
- 5). Vegetation on the site where there is no construction shall remain undisturbed.
- 6). The Applicant shall submit a detailed landscape plan with itemized plant list to the Cape Cod Commission for approval. This plan shall conform to the following minimum standards:
  - The upper parking lot shall be screened from Route 6A by providing an evergreen hedge planted 3 feet-on-center along the western property line and parallel to Route 6A. This hedge shall be maintained at a height not to exceed 4 feet.
  - The lower parking lot shall be screened from adjacent properties by providing an evergreen shrub planting which shall be maintained at a minimum of 6 feet in height.
  - All deciduous tree planting is to be a minimum of 3" caliper planted 20 feet-on-center. Tree planting shall be provided for the following areas:
    - A minimum of 4 canopy trees shall be planted along Route 6A frontage
    - A minimum of 7 canopy trees shall be planted along the western property line in addition to the above hedge planting requirement
- 7). No parking shall be located within 15 feet of all property lines. In addition, a permanent 15-foot buffer measured from the front property line shall be provided along Route 6A. This buffer shall be planted with shrubs not to exceed 3 feet in height. Lawn areas may be included in the front buffer area.
- 8). The Applicant shall obtain a Certificate of Compliance from the Cape Cod Commission or its designee before local officials may issue a Certificate of Occupancy for the development.
- 9). Plans submitted become a part of the decision and any changes must be approved by the Cape Cod Commission.

The Commission hereby approves with conditions the application of Mr. John Mikutowicz of Two-Block Realty Trust for a Development of Regional Impact pursuant to Section 13 of the Act for a proposed 6000 square foot office addition on Route 6A in West Barnstable, MA.

  
Richard S. Armstrong, Chairman

Dec. 3, 1990  
Date

  
Notary *my commission Expires: 8/1/97*

Dec. 3, 1990  
Date