



CAPE COD COMMISSION

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Date: December 16, 1993
To: Thomas J. Flatley
From: Cape Cod Commission
Re: Development of Regional Impact, Section 12, Cape Cod Commission Act
Project #: TR 930014
Project: Southwind Plaza 20,000 Square Foot Retail Expansion
Applicant: Thomas J. Flatley
Lot/Parcel: 1A & 1E
Land Court Certificate of Title # # 101815 - Book # 831, Page 55

Decision of the Cape Cod Commission

Summary

The Cape Cod Commission (Commission) hereby approves with conditions the application of The Flatley Company for a Development of Regional Impact (DRI) permit, with 8 conditions under Section 12 and 13 of the Commission Act (Act), c. 716 of the Acts of 1989, as amended. This decision is rendered pursuant to a vote of the Commission on December 16, 1993.

Project Description

The proposed Southwind Plaza project is a 20,000 sq. ft. addition to the Southwind Plaza strip mall in Barnstable. The existing plaza has a footprint of 175,860 square feet and the additional retail space would bring the mall to 195,860 square feet. The Southwind Plaza Mall is located adjacent to the intersection of Route 132 and Independence Way with the proposed expansion occurring to the back side of the mall between the Stop and Shop and the Bradlees. The site is within the Industrial Park referred to as Independence Park and lies within the Wellhead Protection Area in the Town of Barnstable. The applicant has stated that they do not currently have a tenant for the space once it is constructed.

Southwind Plaza Decision
TR930014

Procedural History

The subcommittee held two public hearings on the above project. The first hearing was held on September 8, 1993 in the Barnstable Town Hall in Barnstable, MA. The hearing was continued to October 7, 1993 where staff, acting as hearing officer, continued the hearing to October 21, 1993. The hearing was continued to October 21, 1993 in the Assembly of Delegates Chamber in the County Complex in Barnstable, with public testimony taken and the hearing subsequently closed. The record was left open until November 17, 1993 and public meetings were then held on November 18, 1993 at the Assembly of Delegates Chamber in Barnstable and November 29, 1993 at the Cape Cod Commission library. At the November 29th meeting the subcommittee voted to recommend approval of the proposed project with conditions. The Commission voted to accept the Subcommittee Report on December 2, 1993 and the project was approved with conditions pursuant to a vote of the Commission on December 16, 1993.

Materials Submitted for the record

Town Submittals:

1. Letter from Robert Schernig, Barnstable Planning Director to Armando Carbonell, Executive Director of the Cape Cod Commission regarding traffic concerns October 15, 1993.
2. Letter from Robert Schernig to Thomas McKean regarding town sewer and Southwind Plaza, received in hand September 8, 1993.
3. Letter from the Board of Health to Joseph Fallon of the Flatley Company regarding a sewage disposal permit, received in hand September 8, 1993.
4. Letter of Referral to the Commission with enclosed referral form June 14, 1993.

Staff Reports and Correspondence:

1. Subcommittee Report, November 29, 1993.
2. Memorandum to the Subcommittee, November 16, 1993.
3. Letter to the Applicant regarding comments over submitted site plans, November 12, 1993.
4. Technical Memorandum from McDonough and Scully, Cape Cod Commission traffic consultant regarding their traffic analysis October 20, 1993.
5. Staff Report, October 18, 1993.
6. Public Hearing Notice, September 8, 1993.
7. Staff Report, September 2, 1993.
8. Memorandum regarding a scheduled site visit August 31, 1993.
9. Letter to Margaret Lynch, Barnstable Town Clerk, regarding space for a hearing, June 15, 1993.
10. Letter to the Applicant regarding the project's status as a DRI June 15, 1993.

Submittals from the Applicant:

1. Letter from Michael Stusse, Attorney for the Applicant, regarding interconnections and DRI issues, November 18, 1993.
2. Memorandum from Michael Stusse, Attorney for the Applicant, regarding conditions proposed for the project October 21, 1993.

3. Submittal from Atlantic Design, Traffic Consultant for the Applicant, regarding a revised traffic impact assessment, October 19, 1993.
4. Letter from Atlantic Design, Traffic Consultant for the Applicant, regarding additional traffic review, September 27, 1993.
5. Letter from Michael Stusse, Attorney for the Applicant, regarding a change in public hearing dates September 29, 1993.
6. Memorandum from Michael Stusse, Attorney for the Applicant, responding to DRI issues, September 2, 1993.
7. Development of Regional Impact Application with attachments, August 27, 1993.
8. Letter from Michael Stusse, Attorney for the Applicant, regarding an abutters list, August 10, 1993.

Submittals from Government Agencies:

1. Letter from the MA Historical Commission stating that the expansion would be unlikely to impact archaeological or historical resources August 23, 1993.

Submittals from the public:

1. Letter from Jane Esbaugh citing the existing traffic problems associated with the Southwind Plaza and the Festival Plaza October 12, 1993.

Additional Materials

1. Letter from Ruth Weil, Assistant Town Attorney for Barnstable, to Patricia Daley regarding the Festival Mall June 10, 1993.
2. Inter-Office Memo from Ruth Weil to Art Traczyk, Barnstable Town Planner, regarding the Cape Cod Commission's procedural denial of the Festival Mall, May 5, 1993.
3. Memo from Art Traczyk, to Robert Smith, Barnstable Town Attorney, regarding a Zoning Board of Appeals hearing on Festival Mall, April 29, 1993.
4. Letter from Patricia Daley, Commission Staff Council, to Ruth Weil, Assistant Town Attorney for Barnstable, regarding the Festival Mall in Barnstable, March 18, 1993.
5. Letter to Sandra Shapiro, Attorney for Festival Mall, from Joseph DaLuz, Barnstable Building Inspector, regarding a foundation permit for the Festival Mall, December 29, 1993.
6. Letter to Joseph DaLuz, Barnstable Building Inspector from Sandra Shapiro, Attorney for the Festival Mall regarding a foundation permit, December 1, 1993.

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

Testimony

At the September 8, 1993 hearing the Commission, heard oral testimony from Michael Stusse, attorney representing the applicant. Mr. Stusse indicated that the 20,000 square foot addition is essential for the plaza to remain economically viable. Other retail establishments have been constructed in the area and the plaza needs to expand to remain competitive Mr. Stusse added. Mr. Stusse said that the Flatley Company does not currently have a tenant for the proposed expansion.

He also stated that he would demonstrate that the project complies with the Regional Policy Plan and the benefits detriments test.

Robert Schernig, Barnstable Planning Director, stated that the town's main concerns were related to water resources and traffic. He said that information from the Board of Health indicated that the existing site violated Board of Health wastewater regulations, based on actual water meter readings, but that this could be remediated if the project connects to the sewer system that will be built in the spring of 1994. He also said that the town was supportive of an interconnection between the Southwind Plaza and the adjacent Festival Mall as a way to help alleviate traffic congestion on Route 132 in this area.

Dennis Finn, Regulatory Planner for the Commission stated that the uncertainty of use for the expansion made the project difficult to review, but that water resources and traffic were also the staff's primary concerns. The subcommittee requested additional information and continued the hearing to October 7, 1993.

The October 7, 1993 hearing was opened and continued to October 21, 1993, by Dennis Finn, Regulatory Planner for the Commission as a hearing officer. No testimony was taken.

A public hearing was held and testimony taken on October 21, 1993 at the Assembly of Delegates Chamber in Barnstable. Ed Sweeney and Michael Stusse, attorneys for the applicant, presented new information at the hearing. A letter was submitted offering four conditions with respect to the water resource and traffic issues. Mr. Sweeney said that the applicant believes that the Commission staff's recommendations are arguably justifiable and consequently the applicant agrees to four conditions. The conditions indicated: that the expansion will not open until the sewer connection to the plaza is completed; the expansion will not open until an interconnection is completed between the two malls; that the Cape Cod Commission could review proposed tenants for the expansion for compliance with the Regional Policy Plan's hazardous materials minimum performance standards; and that landscaping will be provided along with the interconnection.

Mr. Sweeney further discussed the traffic situation and stated that he believed that the interconnections were satisfactory to the Commission as mitigation. He added that a bus shelter and a bicycle rack would also help with the required 20% trip reduction. Mr. Sweeney said that the expansion will not open until all of the conditions are completed to the Commission's satisfaction.

Mr. Russ Davenport, assistant town engineer, stated that another possible solution to the traffic problem would be the creation of an access road behind the plazas running parallel to Route 132. Mr. Davenport stated that the town has looked at this option in the past and there are several combinations that could be used to satisfy the traffic mitigation.

The Subcommittee closed the hearing and left the record open until November 17, 1993. A public meeting was then scheduled for November 18, 1993.

Jurisdiction

The proposed Southwind Plaza expansion qualifies as a DRI under section (c) (6) as "Any proposed retail...development...greater than ten thousand square feet..."

Findings

The Commission has considered the application of The Flatley Company for a 20,000 sq. ft. expansion to the Southwind Plaza located in Barnstable, MA. and based on consideration of such application and upon the information presented at the public hearings makes the following findings pursuant to section 12 of the Act:

1. The Southwind Plaza located in Barnstable seeks to expand the existing plaza by a total of 20,000 sq. ft.
2. The existing plaza is currently in violation of the Town of Barnstable's 330 rule which requires that developments be limited to 330 gallons per day of wastewater per acre.
3. The Town of Barnstable is currently constructing and will operate a sewer line in Independence Park in the vicinity of the Southwind Plaza. The sewer line is anticipated to be operational by the spring of 1994. Southwind Plaza has a sewer connect line in place and will be able to connect to the town's sewer line when it is completed. Connection to the sewer line is the only feasible way for the project to be approved and be in compliance with the Commission's Regional Policy Plan (RPP) and the town's Board of Health regulations.
4. The project as proposed will add approximately 700 new vehicle trips per day to the Plaza.
5. The applicant has proposed to enter into negotiations with the neighboring Festival Mall to construct two interconnections that will facilitate cross traffic, both pedestrian and vehicular, thereby reducing congestion on the Route 132 roadway that serves both retail plazas. The applicant understands that they must bring the plans for the interconnection to the Barnstable Site Plan Review Board for approval prior to getting a building permit and that they must have an interconnection fully constructed, operational and open to the public prior to getting a Certificate of Occupancy. The applicant also acknowledges and accepts the risk and responsibility that is involved in moving forward with the interconnection as a form of mitigation.
6. The applicant has agreed to provide a bus shelter and bicycle rack on site. The bus shelter is subject to the approval of the Regional Transit Authority and the Commission Transportation Staff to ensure that the shelter is appropriately located and designed to operate efficiently and safely.
7. The applicant has proposed a landscaping plan using natural vegetation to help buffer the expansion and to enhance the completed structure.
8. The applicant will provide signage on-site to identify the location and availability of the interconnections once they are constructed and operational.
9. The applicant has not identified a tenant or type of use that they would allow to use the expansion once it is opened.
10. Due to the uncertainty of use of the expansion, the applicant has proposed to allow the Commission an opportunity to review the type of use that will occupy the expansion to ensure compliance with the Commission's RPP with respect to water quality and hazardous materials.

Conclusion

Based on the findings above, the Cape Cod Commission hereby approves the application for a Development of Regional Impact permit, with eight conditions. The Commission has reviewed the project against the Minimum Performance Standards in the Regional Policy Plan (RPP) and has determined that the project complies with the RPP. Further, the Commission finds that with the interconnect in place, the expansion of the Southwind Plaza meets the test that the benefits of a project must outweigh the detriments. The Commission hereby approves with conditions the proposed expansion to the Southwind Plaza for a DRI permit.

Conditions

1. Southwind Plaza is prohibited from opening any part of the expansion until written confirmation from the Town of Barnstable is received by the Cape Cod Commission indicating that Southwind plaza is connected to a functioning sewer line as constructed and operated by the Town.
2. Prior to the issuance of a building permit, the applicant shall receive an approval from the Barnstable Site Plan Review Board for the vehicular interconnection with sidewalk and pedestrian walkway as referred to on the final site plan. In addition, before the issuance of a building permit, the applicant shall furnish to the Commission, a letter from the neighboring Festival Mall demonstrating that the interconnection is agreed to in concept by the Festival Mall. A copy of the site plan shall be furnished to the Commission. Prior to the issuance of a Certificate of Occupancy, the vehicle interconnection with sidewalk and the pedestrian-only interconnection shall be constructed and fully functioning. If the interconnection is not constructed for any reason, the project shall be returned to the Commission for further review and analysis of traffic impacts and required mitigation. It is understood that the applicant has proposed this condition and they recognize the inherent risks that are involved with the third party agreement as proposed.
3. The vehicular interconnection shall be two lanes of adequate width to allow for traffic to pass back and forth between the two malls and shall conform to the Town of Barnstable's by-laws and regulations.
4. A bus shelter shall be designed and constructed prior to the issuance of an occupancy permit for the plaza expansion. The bus shelter location and design must be approved by the Commission's Transportation staff and the Regional Transit Authority prior to the shelter's construction. Prior approvals are required to ensure that the most appropriate location, size and dimensions of the shelter will facilitate viable bus route(s) that operate efficiently and safely.
5. A bicycle rack shall be provided on site prior to the issuance of an occupancy permit.
6. Prior to the issuance of an occupancy permit for the expansion, Southwind Plaza agrees that the Cape Cod Commission or designee will have the right to review the proposed tenant(s) for compliance with the Commission's minimum performance standards in the Regional Policy Plan for the protection of water resources and conformance with hazardous materials, waste and disposal. Any future tenant that proposes a change of use for the expansion space must also comply with the Commission's minimum performance standards with respect to water resource protection and hazardous materials.

