



operate 7 days a week and will serve lunch and dinner only. No alcoholic beverages will be served. The normal hours of service are 11:00 am to 8:30 pm.

### JURISDICTION

The purpose of the Jurisdictional Determination request is to determine whether the proposed restaurant at Festival at Hyannis in Barnstable, MA requires mandatory referral under thresholds established in Section 3 of the DRI enabling regulations, specifically, whether the project presents a change of use for greater than 10,000 square feet of floor area. In addition the Commission must determine if the project qualifies for an exemption under Section 22 of the Act.

### PROCEDURAL HISTORY

The Commission received a Jurisdictional Determination request from Patrick M. Butler, attorney for the applicant, on November 21, 1994. The application was found to be incomplete and Mr. Butler was notified on November 28, 1994. The required information was provided by Mr. Butler and the application was deemed complete on December 5, 1994. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized Subcommittee of the Commission on the Jurisdictional Determination request on December 14, 1994 in Rooms 11 & 12 of the Superior Court House, Barnstable, MA. At the close of the public hearing the Subcommittee unanimously voted that the project does not require mandatory referral under DRI thresholds contained in Section 3 of the Cape Cod Commission DRI enabling regulations.

#### Materials Submitted for the Record:

- Jurisdictional Determination application
- Site Layout Plan (6/23/89), Grading Plan (6/23/89), Drainage and Utility Plan (4/27/94), Site Details (two pages, 6/23/89) prepared by Daylor Consulting Group, Inc., Boston.
- Letter from Patrick M. Butler, attorney for the applicant, to Patty Daley, Staff Counsel Cape Cod Commission, dated November 21, 1994.
- Letter from Katharine Peters, Commission Clerk to Patrick M. Butler, dated November 25, 1994.
- Letter from Gay D. Wells, Project Planner, Cape Cod Commission to Patrick M. Butler, dated November 28, 1994.
- Letter from Patrick M. Butler to Gay D. Wells, dated November 29, 1994 with attachments.

- Letter from Patrick M. Butler to Barnstable Town Clerk, dated November 29, 1994.
- Transfer Certificate of Title for Lots 18 & 19, dated October 25, 1990.
- Letter from Patrick M. Butler to Ralph M. Crossen, Building Commissioner, Town of Barnstable, dated November 14, 1994.
- Application for Site Plan Review to Town of Barnstable from Patrick M. Butler, no date.
- Letter from Gay D. Wells to Patrick M. Butler, dated December 5, 1994.
- Letter from Patrick M. Butler to Gay D. Wells, dated December 7, 1994.
- Letter from Stephen G. Seymour, P.E. and Robert Schernig, Director of Planning Town of Barnstable to Armando J. Carbonell, Executive Director, Cape Cod Commission, dated October 15, 1993.
- Letter from Grover C.M. Farrish, M.D., Chairman Barnstable Board of Health to Bryan Koop, CMANE Limited, dated April 24, 1989.
- Letter from Ralph M. Crossen, Building Commissioner Town of Barnstable to Patrick M. Butler, dated November 2, 1994.

Additional Materials:

- Cape Cod Commission Staff Report, dated December 8, 1994.
- Barnstable Local Comprehensive Plan, Strategies 4.1.1.4.4 & 4.1.7.2.3.
- Editorial, Cape Cod Times, dated December 8, 1994.
- Telephone calls from abutters:
  - Marjorie Bronsdon, November 29, 1994.
  - Madeline Gaffey, December 2, 1994.
  - Ann Gannon, December 2, 1994.
- Written responses from abutters:
  - Leonard Rosenberg, December 5, 1994.
  - Sylvia Franklin, December 9, 1994.
  - Lily Tu, December 7, 1994.
- Southwind Plaza Decision, TR930014, dated December 16, 1993.
- Receipts for check \$200, November 21, 1994 and check \$750, November 22, 1994.
- Definition of "Change of Use", adopted June 9, 1994.
- Festival Schedule.
- Hearing Notice, Cape Cod Commission.
- Public Hearing Handout from Patrick M. Butler re: Change of Use Analysis.
- Delegations of Authority, Cape Cod Commission, October 8, 1993.
- Minutes of Public Hearing, dated December 14, 1994.

The application and notice of the public hearing relative thereto, the Commission's staff reports, and exhibits, minutes of the hearing and all submissions received in the course of the proceedings, including materials submitted on file JD#94016 are incorporated into the record by reference.

## TESTIMONY

Patrick Butler presented the project to the Subcommittee and explained the previous permitting. It is Mr. Butler's position that the project is not a DRI; however, Ralph Crossen, Barnstable Building Inspector, made a determination that the proposed restaurant constitutes a change of use and is, therefore, a Development of Regional Impact (DRI) under the Cape Cod Commission Act.

Dave Chase, President of the Economic Development Corporation, stated that he is concerned over the precedent of considering the proposal a change of use and the ramifications on other vacant buildings. Bob Schernig, Barnstable Planning Director, stated his position that it would be undesirable to require an applicant to return to the Commission every time a storefront changed.

John Powers spoke in opposition to the project. Lanny Chase spoke in favor of the project. Ralph Crossen explained his position regarding the Development of Regional Impact.

## FINDINGS

The Subcommittee has considered the applicant's request for a Jurisdictional Determination regarding the proposed restaurant at Festival at Hyannis in Barnstable, MA. Based upon consideration of such request, upon information presented at the public hearing and submitted for the record, the Subcommittee makes the following findings:

1. The proposed project is to lease 11,385 square feet of existing commercial space, which was previously occupied by Walgreen's Pharmacy, to Buffets, Inc. for use as an Old Country Buffet restaurant.
2. The project proposes to renovate existing space within the Festival at Hyannis shopping center which was constructed in 1989. All renovations will take place within the building and no substantial changes to the facade are expected.
3. The proposed project is a sit down, full-service, buffet-style family restaurant with 402 seats. The proposed restaurant will operate 7 days a week and will serve only lunch and dinner. No alcoholic beverages will be served; therefore, no liquor license is required.
4. Festival at Hyannis is located within a Wellhead Protection Area and the Lewis Bay Marine Water Recharge Area. The water quality impacts from the proposed change of use from a pharmacy to a restaurant would significantly exceed the

standards outlined in the Regional Policy Plan if the restaurant were connected to a Title 5 septic system. The project proponents have proposed to connect the restaurant to the Barnstable wastewater treatment facility and have obtained a permit from the state DEP to connect to the existing sewer system. No permit has been obtained from the Town of Barnstable at this time. The connection to the sewer system is necessary and should be confirmed prior to the opening of the restaurant.

5. At the time of permitting and construction of the shopping center, a variance was granted by the Barnstable Board of Health on April 24, 1989 which prohibited high water users, such as restaurants, to operate in the mall until connected to the municipal sewer system.
6. The number of required parking spaces for the shopping center as a whole, with inclusion of the proposed Old Country Buffet, totals 1,133 spaces. Currently, there are 1,254 existing spaces at the shopping center site. This indicates an excess of 121 parking spaces. Consequently, there will be no change in parking layout and number of spaces.
7. The applicant represented and the Commission finds that a restaurant was contemplated as a potential use at the time of construction. Parking and traffic counts were calculated with this use in mind. At that time anticipated traffic impacts were mitigated by the installation of a traffic signal at the entrance to Festival at Hyannis on Route 132. Access to the shopping center will not change and there will be no change to the site plan due to the proposed project.
8. Based on the ITE *Trip Generation* manual, the proposed Old Country Buffet would essentially replace the square footage of the previous Walgreen's development. That is, the square footage of 204,987 for the shopping center remains the same. Since traffic generation for this reuse of existing commercial space was based upon the square footage of the entire development (shopping center with restaurant), there will be no increase in traffic compared to the previous development (shopping center with pharmacy).

Information provided by the applicant supports the ITE data that the new development will have an insignificant impact compared to the previous development. This information made a comparison based upon two isolated developments rather than uses within a shopping center. Based upon data from the restaurant chain, the proposed restaurant is expected to generate 74 additional vehicle trips per day compared to the Walgreen's development. Since the shopping center generates approximately 10,000 vehicle trips per day, the increase is insignificant.

Based upon the ITE data showing no traffic increase and the applicant's backup data showing minimal increase, this change in use from a pharmacy to a restaurant is not expected to have significant traffic impacts.

9. The Commission has not received any evidence that the proposed project is exempt under Section 22 of the Act.

CONCLUSION

Based on the findings above, the Commission concludes that the project is not exempt from Commission review under Section 22 and does not require mandatory referral for DRI review as a change of use exceeding 10,000 square feet of floor space under Section 3 of the DRI enabling regulations. This decision is specific to the facts presented by the Old Country Buffet proposal.

It should be noted that the project may be referred to the Commission as a Discretionary Referral for DRI review within 60 days of this decision. The project may require Commission review if project review is required under the Massachusetts Environmental Policy Act, MGL Chapter 30, Sections 61-62(4).

  
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Kenneth Brock, Chair

12/14/94  
\_\_\_\_\_  
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 21<sup>st</sup> day of Dec 1994

Katharine X Peters  
\_\_\_\_\_  
Name, Notary Public

My commission expires: