



CAPE COD COMMISSION

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Date: October 9, 1997

Applicant: Arthur Souza
c/o Ament & Ament, Attorneys
39 Town Hall Square, Post Office Box 919
Falmouth, MA 02540

Project #: JD97020

Project: Souza Self-Service Gas Dispensing Facility and Convenience Store
Sandwich Road at Route 151
Falmouth (Hatchville), MA

RE: Development of Regional Impact
Jurisdictional Determination
Cape Cod Commission Act, Section 12(j)

Lot/Plan: Lot 197, Land Court Plan 12349
Certificate of Title 19958

Owner: Harvey Clauson

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds that the proposed Souza Self-Service Gas Dispensing Facility and Convenience Store in Falmouth, MA is not subject to mandatory review under Section 3(e) of the Cape Cod Commission Development of Regional Impact (DRI) Enabling Regulations, Barnstable County Ordinance 90-12, as amended. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on October 8, 1997. This subcommittee was authorized by a vote of the full Commission to make the final determination for this project.

Souza Gas Station, Falmouth, MA #JD97020
Jurisdictional Determination Decision - October 9, 1997

PROJECT DESCRIPTION

The project proposes developing Lot 197, a 42,273 sq ft commercially zoned lot at the corner of Sandwich Road and Route 151, in Falmouth, MA. The project is a self-service fuel dispensing station with 4 pumping islands to serve 8 vehicles at a time, and a 2,500 sq ft building with a drive-through window. The building will house a retail convenience store and office. The gas pump area will be covered by a canopy 108 ft long by 24 ft wide; a total of 2,592 sq ft. The total outdoor commercial area of the proposed project, including gas pumping area, drive-through, parking, and landscaping is 39,773 sq ft.

PROCEDURAL HISTORY

The applicant requested a Jurisdictional Determination from the Commission on September 15, 1997. The Commission determined that the application was complete on September 23, 1997. A duly noticed public hearing pursuant to Section 5 of the Act to consider the request was held by an authorized subcommittee of the Commission on October 8, 1997 in the Morse Pond School, Falmouth, MA. The public hearing and record were closed on October 8, 1997. At the close of the public hearing the subcommittee held a public meeting where the subcommittee voted unanimously that the project was not subject to mandatory review as a Development of Regional Impact.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

- Site plan, revision #3, prepared by Tyree Engineering, PC, dated May 21, 1997
- Application for Special Permit from the Town of Falmouth Board of Appeals dated June 27, 1997
- Site Plan Review Request from the Town of Falmouth Planning Board dated June 30, 1997
- Letter from Thomas Bunker, PLS to Robert Ament dated August 26, 1997
- Plan of Land, prepared by BSS Design, dated September 11, 1997
- Jurisdictional Determination application dated September 15, 1997

Cape Cod Commission

- Letter from Heather McElroy, Commission Staff to Robert Ament, Attorney to the applicant dated September 23, 1997 indicating application completeness
- Cape Cod Commission staff report dated October 8, 1997
- Letter from Jo Ann Muramoto, Falmouth Conservation Commission Administrator to Cape Cod

Commission withdrawing discretionary referral, dated September 9, 1997

Additional Materials in the file Prior to the Application

- Letter to Harvey Clauson from ComElectric dated September 26, 1996
- Plan of Land, prepared by BSS Design, dated November 22, 1996
- Determination of Applicability, Town of Falmouth Wetlands Protection Bylaw, filed November 25, 1996
- Letter to Thomas Bunker, BSS Design, from Andrea Arnold, Natural Heritage and Endangered Species Program, dated February 19, 1997
- Conceptual Building Elevation, revision #2, prepared by Tyree Engineering, PC, dated April 23, 1997
- Report to the Falmouth Conservation Commission from CR Environmental, Inc., dated May 7, 1997
- Conceptual Floor Plan, revision #1, prepared by Tyree Engineering, PC, dated May 20, 1997
- Conceptual Canopy Elevation, revision #2, prepared by Tyree Engineering, PC, dated May 20, 1997
- Landscaping Plan, revision #2, prepared by Tyree Engineering, PC, dated May 20, 1997
- Site plan, revision #2, prepared by Tyree Engineering, PC, dated May 21, 1997
- Letter to Robert Ament from Jo Ann Muramoto, dated May 28, 1997
- Traffic Impact Assessment prepared by Atlantic Traffic and Design Engineers, Inc. dated July 9, 1997
- Letter to Brian Currie from Raymond Jack, Utilities Manager, dated July 15, 1997
- Letter to Dorr Fox from Robert Ament dated August 4, 1997
- Memo to the Falmouth Planning Board from Jo Ann Muramoto, dated August 5, 1997
- Letter to Jo Ann Muramoto from Mario DiGregorio, PWS, dated August 5, 1997
- Memo to the Falmouth Planning Board from Jo Ann Muramoto, dated August 11, 1997
- Letter to Cape Cod Commission and Falmouth Planning Board from Jo Ann Muramoto, Falmouth Conservation Commission Administrator dated August 11, 1997
- Discretionary Referral from Jo Ann Muramoto to Armando Carbonell, Dorr Fox dated August 22, 1997
- Letter from Jo Ann Muramoto, Falmouth Conservation Commission Administrator to Robert Ament dated August 28, 1997
- Assessor's map of the site
- Letter from Mario DiGregorio, Falmouth Conservation Commission to Kathy Sferra, Commission Staff dated September 1, 1997
- Letter from Robert Ament, Attorney to the applicant to Dorr Fox, Commission Staff dated September 2, 1997

- Letter from Jo Ann Muramoto, Falmouth Conservation Commission Administrator to Cape Cod Commission, dated September 10, 1997

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

TESTIMONY

At the October 8, 1997 public hearing, Robert Ament, attorney for Mr. Souza, explained that it is his position that the proposed gas station does not require DRI review by the Cape Cod Commission because the project does not exceed a DRI threshold for commercial projects and that the Commission determined that a project with similar circumstances, Subaru of New England, was not a DRI. Heather McElroy, Commission planner, presented the staff report, recommending that the project did not require DRI review. She noted that the threshold for outdoor commercial projects could be considered unclear and that in the previous case of Subaru of New England, jurisdiction was not claimed.

Thomas Cahir, State Representative, requested that the Commission not require DRI review. Diane Thompson, consultant to the applicant and Clerk to the Assembly of Delegates, explained that revised thresholds clarifying that the Commission would have jurisdiction over the project were not approved by the Assembly of Delegates because the Assembly had concerns over the threshold. Pamela Polloni, Falmouth resident, explained that she believes that the project exceeds the outdoor commercial threshold for DRI review and that the Commission should claim jurisdiction.

The committee held a meeting following the public hearing where they voted that the Commission does not have mandatory jurisdiction over the gas station project.

FINDINGS

The Commission subcommittee has considered Arthur Souza's request for a Jurisdictional Determination regarding the proposed Self-Service Fuel Dispensing Facility and Convenience Store in Falmouth, MA, and based upon consideration of such request, information presented at the public hearing and submitted for the record, makes the following findings:

- 1). The project consists of the development of a 42,273 sq ft site on Lot 197 in Falmouth, MA at the intersection of Route 151 and Sandwich Road. The project includes a 2,500 sq ft building to

house a convenience store with drive-through window, and a 2,592 sq ft outdoor canopy over the gas pump area.

2). The project does not qualify as a DRI under Section 3(e) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 as amended. Section 3(e) requires review of any commercial, service, retail or wholesale business, office or industrial development, as well as any private health, recreational or education development, [including]:

- *new construction with a gross floor area greater than 10,000 sq ft.;...
- *new construction... involving outdoor commercial space greater than 40,000 sq ft.

The proposed project does not involve development of outdoor commercial space greater than 40,000 sq ft or indoor commercial space greater than 10,000 square feet and is therefore not a mandatory DRI.

3. The Cape Cod Commission considered asserting jurisdiction over an auto dealership project proposed by Subaru of New England in Bourne, MA. This project also exceeded 40,000 square feet of commercial area, consisting of approximately 39,000 square feet of outdoor commercial space and 7200 square feet of indoor commercial space. The Commission voted to not assert jurisdiction in this case. The Commission committee reviewing the Souza gas station project votes to not claim jurisdiction over the project to be consistent with the Commission vote on the Subaru of New England project.

CONCLUSION

Based on the findings above, the Commission hereby concludes that the proposed Souza Self-Service Gas Dispensing Facility and Convenience Store in Falmouth, MA is not subject to mandatory review under Section 3 of the DRI Enabling Regulations. This conclusion is based on findings #1 - 3 above. This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on October 8, 1997.



Sumner Kaufman, Subcommittee Chair

10/9/97

Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 9th day of October 19 97

Katharine L. Peters

Name, Notary Public

My Commission expires:

~~My Commission Expires December 3, 1997~~