

## CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

Date: July 27, 1998

Re: Development of Regional Impact Hardship Exemption  
Modification Request  
Cape Cod Commission Act, Section 23

Applicant: Cape Cod Hospital

Project #: MOD96018

Project: Cape Cod Hospital Cancer Treatment Center and  
Ambulatory/Day Surgery  
27 Park Street  
Hyannis, MA 02601

Lot/Plan: Book 7184, Pages 236-238  
Book 472, Pge. 40

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### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Cape Cod Hospital for a Modification to an Approved Development of Regional Impact Decision pursuant to Section 9(n) of the DRI Enabling Regulations. Findings numbered 1 through 6 are hereby added to Decision of MOD96018 of October 17, 1996. Conditions 1, 3, 7, and 11 in the written Decision of MOD96018 of October 17, 1996 are hereby modified by the Conditions of this Decision.

The application is hereby approved as a Minor Modification #2 under Section 7 of the Administrative Regulations (as revised). The Decision is rendered pursuant to a vote of the Regulatory Committee on July 27, 1998.

#### PROJECT CHRONOLOGY

On October 17, 1996, the Commission approved modifications to the 1991 Hardship Exemption Decision. The applicant proposed to construct an addition consisting of 22,600 square feet for ambulatory surgery and a cancer treatment center.

Condition 1 of the October 17, 1996 Decision specified that required landscaping along Bay View Street would be completed by June 1, 1997, and that the Irrevocable Letter of Credit held by the Commission would be returned upon completion of the work.

On June 16, 1997, the Regulatory Committee granted a 90-day extension for completion of landscaping associated with Section 1A of the Decision.

On October 30, 1997, staff inspected the site prior to consideration of issuing a Certificate of Compliance for the project. Several conditions of the Decision relating to landscaping and transportation were found to be incomplete. On November 3, 1997, the Regulatory Committee approved this modification subject to the submittal of an irrevocable Letter of Credit to ensure compliance with all terms and conditions required by the Decision #MOD96018 as modified, except for incomplete landscaping which is subject to a separate existing Letter of Credit.

At its regular meetings on February 23, March 9, April 21 and May 4, 1998, the Regulatory Committee reconsidered the draft Decision with respect to landscaping, parking lot lighting and a method of securing the finalization of the conservation restriction that was to include an additional acre as a result of the intrusion of the new parking lot into the wetland buffer.

At the Regulatory Committee meeting on June 15, the subcommittee voted to accept an extension of the existing Letter of Credit until July 31, 1998. Due to requirements of Cape Cod Bank & Trust for a minimum 60 day extension, the Letter of Credit was actually extended to August 31, 1998.

At its meeting on July 27, the Regulatory Committee voted to approve the Cape Cod Hospital Hardship Exemption Modification #96018, as amended, and to accept a reduced Letter of Credit in the amount of \$5,500.

#### **DISCUSSION AT THE REGULATORY MEETINGS**

Staff reported that several conditions of the October 17, 1996 Decision were incomplete, including 1A, 1B, 3, and 7, and that relating to Condition 11, the applicant constructed a parking lot prior to the submittal of a required report to the Regulatory Committee. In addition, the parking lot contained 50 more spaces than proposed by the applicant in the original review and was located within the 100' buffer to a wetland. The Regulatory Committee discussed various ways in which the applicant could mitigate the intrusion into the wetland buffer and ensure completion of the remaining conditions. To mitigate the intrusion into the wetland buffer, the applicant agreed to provide one (1) additional acre of off-site open space. The Regulatory Committee approved the Minor Modification subject to an irrevocable Letter of Credit in the amount of \$150,000 with a termination date of June 30, 1998, to ensure compliance with all terms and conditions required by the Decision #MOD96018 as modified, except for incomplete landscaping which is subject to a separate Letter of Credit. Approval of the newly constructed parking lot was deferred subject to submission of a lighting plan for the parking lot and staff approval of the additional off-site open space. This Minor Modification will allow

the Executive Director of the Cape Cod Commission to issue the Certificate of Compliance.

At the Regulatory Committee Meeting of March 9, 1998, Mr. Butler requested that the subcommittee consider accepting a mortgage for the 5.85 acres in favor of the Yarmouth Conservation Trust in lieu of the \$150,000 Letter of Credit for the proposed open space. The subcommittee requested that he discuss the proposal with Commission counsel.

At the Regulatory Committee meeting of April 21, 1998, Mr. Butler reported that the Yarmouth Conservation Trust and Commission staff counsel were comfortable with the Escrow Deed proposal, and that a deed in escrow for the amount of required open space will be established on behalf of the Yarmouth Conservation Trust with the understanding that the conservation restriction would be recorded by December 31, 1998. The subcommittee also received a revised lighting plan for the new parking lot.

At the Regulatory Committee Meeting of May 4, 1998, staff discussed the lighting plan for the new parking lot, and the subcommittee directed staff to request additional information. Staff also reported that the existing Letter of Credit would expire on June 30, 1998, and the landscaping that it was meant to assure was incomplete. The subcommittee indicated that they were not in favor of extending the time frame for the Letter of Credit, and asked staff to write a letter requesting a basis in law as to why the landscaping work cannot be commenced immediately and completed prior to June 30, 1998.

At the Regulatory Committee meeting on June 15, Mr. Butler reported that the incomplete landscaping would be completed by July 15, 1998. Accordingly, the subcommittee voted to accept an extension of the existing Letter of Credit until July 31, 1998. After a report by staff about lighting and safety considerations in the newly constructed parking lot, the subcommittee voted to approve the lighting that was installed. The subcommittee received the revised draft Decision to review.

At the July 27, 1998 Regulatory Committee meeting, staff reported that all landscaping work required by this Modification Decision was complete. The applicant submitted a landscape plan for the Main Lobby/Entrance area, which was approved by staff. Based on an estimate that was also submitted, the applicant made a verbal commitment to provide a revised Letter of Credit in the amount of \$5,500 to ensure that the landscaping will be installed when the Cape Cod Hospital Lobby Expansion project has been completed. The Regulatory Committee voted to approve the Cape Cod Hospital Hardship Exemption Modification #96018, as amended, and to extend the Letter of Credit for two years.

#### **MATERIALS SUBMITTED FOR THE RECORD**

- Cape Cod Hospital Proposed Parking Lot Plans dated July 1997.
- A manufacturer's point to point printout indicating the horizontal footcandle levels at grade identified as "REC'D JUN 6 1997".
- Manufacturers specification sheets on the luminaires used.
- Letter dated July 27, 1998 from Attorney Butler to Tana Watt, Planner.

- Sketch landscape plan for Main Lobby/Entry area and Landscape site plan dated 6/25/98.
- The notice of the Regulatory Committee meeting relative thereto, the Commission's staff reports, and exhibits, minutes of the Regulatory Committee and all submissions received in the course of the proceedings, including materials submitted on file #MOD96018 are incorporated into the record by reference.

Note: No written materials or verbal comments were submitted on this modification request by the State, Town officials or the public.

### JURISDICTION

The proposed changes to the Cape Cod Hospital Modification project qualify as a Minor Modification #2 to an approved DRI Decision under Section 9(n) of the DRI Enabling Regulations.

### FINDINGS

The Commission's Regulatory Committee has considered the application of Cape Cod Hospital for a Modification to an Approved Development of Regional Impact Decision under Section 9(n) of the DRI Enabling Regulations for the purpose of issuing a Certificate of Compliance and ensuring compliance with the October 17, 1996 Hardship Exemption Modification Decision.

- 1) The Regulatory Committee finds that Condition 3 of the Decision stating that the applicant shall provide a permanent conservation restriction that is recorded at the Registry of Deeds or Land Court prior to the issuance of a Certificate of Compliance has not been completed due to delays associated with the consent agreement issued by the Environmental Protection Agency.
- 2) Condition 7 of the October 17, 1996 Modification Decision requires cooperation between the Cape Cod Hospital, the Cape Cod Commission and the State to develop a list of improvements to region-wide Hospital signage and to develop a list of intersection locations for future signal pre-emption capabilities to give priority to emergency vehicles on area roadways. The applicant met with Commission staff, town officials and Massachusetts Highway Department officials on July 24, 1998 to discuss these issues. At this meeting, all parties agreed to signage and pre-emption locations for future consideration by the applicant. Commission staff agreed to prepare a document outlining these recommendations which will be provided to all parties.
- 3) The Regulatory Committee finds that Condition 11 of the October 17, 1996 DRI Decision stating that the applicant shall submit a written report to the Regulatory Committee providing an analysis of the implementation of the parking control and traffic circulation management plan described in Condition 8 was not submitted. The Regulatory Committee finds that 200 parking spaces were constructed without the submittal of a required report as per Condition 11. The Regulatory Committee finds that the parking lot is located within the 100' buffer to a wetland in violation of the Regional Policy Plan. The applicant offered to mitigate the violation by providing an additional

acre of permanent open space in the conservation restriction required by Condition 3 of the October 17, 1996 Decision.

4) All landscaping related to Condition 1A and 1B of the 1996 Decision was complete as of July 24, 1998. The applicant is unable to landscape the western edge of the parking lot near Gleason Street because they do not own the property designated for landscaping on the approved 1991 and 1996 landscape plans.

5) The applicant submitted a point to point lighting printout for the new parking lot and manufacturers specifications for the lighting fixtures as requested by staff and in accordance with Technical Bulletin 95-001, Development of Regional Impact Guidelines for Exterior Lighting Design Standards and Submittal Requirements. Although the height of the light poles was 25', exceeding the Technical Bulletin standard of 20', information was provided that for adequate security monitoring the additional pole height was necessary. The information submitted indicates that spillover of light beyond the property lines is unlikely.

6) On July 27, 1998, the applicant submitted a sketch plan for landscaping related to Phase III of the Cape Cod Hospital Hardship Exemption Modification dated October 17, 1996 to be installed when the Cape Cod Hospital Lobby Expansion project has been completed. Except for the plantings indicated on this landscape plan, the applicant has completed the landscaping required under previous Decisions and the Letter of Credit issued to ensure their completion. The applicant has also submitted an estimate for the plantings in the amount of \$5,000.00. The Regulatory Committee will accept a revised Letter of Credit in the amount of \$5,500.00 (110% of the estimated cost) to ensure their installation.

#### CONDITIONS

1) The applicant shall provide a Deed to be held in escrow by the Yarmouth Conservation Trust and which shall be released from escrow by the Yarmouth Conservation Trust upon approval and recording of the Conservation Restriction covering the property identified in the Cape Cod Commission Modification of Development of Regional Impact Hardship Exemption Decision dated October 3, 1996. In the event that the conservation restriction is not recorded by December 31, 1998, then the deed shall revert to the Yarmouth Conservation Trust. The terms and conditions of the agreement have been identified in an agreement letter submitted in April 1998.

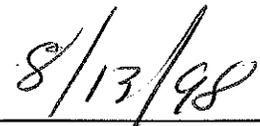
2) To mitigate the construction of the new parking lot within the 100' buffer to a wetland in violation of Condition 11 of the original DRI Decision (dated October 17, 1996), one (1) acre of upland shall be provided as additional off-site open space and shall be included in the conservation restriction required by Condition 3 of the modified DRI Decision (dated October 17, 1996). The new total acreage for off-site open space for the project shall be 5.83 acres. The additional dedication shall be subject to approval by Cape Cod Commission staff.

(3) Since the applicant is unable to landscape the western edge of the parking lot near Gleason Street, the landscaping dedicated for this area will be applied elsewhere on the Hospital Campus subject to approval by Cape Cod Commission staff.

(4) The Letter of Credit for incomplete landscaping shall be reduced to a total of \$5,500.00 and extended for a period of two years to August 31, 2000. Upon completion of lobby area landscaping, the Letter of Credit shall be returned to the applicant.



Robert Deane, Regulatory Committee Chairman

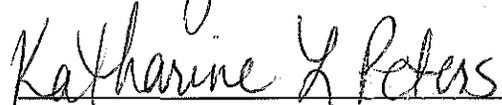


Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 13<sup>th</sup> day of August 1998

  
Name, Notary Public

My commission expires:

